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11 INVESTORSHUB.COM, INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 KENNETH EADE,

16 Plaintiff,

17 v.

18 INVESTORSHUB.COM, INC., a
Florida corp., DOE 1, aka NO
19 DUMMY, DOE 2, aka JANICE
SHELL, DOE 3, aka FASTER183,
20 DOE 4, aka STOCK MAVIN, DOE 5,
aka RENEE, DOE 6, aka VIRTUAL
21 DREW, DOE 7, aka BOB 41, DOE 8
aka OVERACHIEVER, DOE 9, aka
22 DOBERMAN, and DOE 10,

23 Defendants.
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Case No. CV11-01315 JAK (CWx)

**DEFENDANT INVESTORSHUB.COM,
INC.'S OPPOSITION TO THE EX
PARTE MOTION TO APPEAR BY
TELEPHONE OF KENNETH EADE**

**I. THE COURT SHOULD DENY KENNETH EADE'S REQUEST TO
APPEAR TELEPHONICALLY AS THERE IS NO BASIS TO
SUPPORT HIS EX PARTE APPLICATION**

On April 26, 2016, the Court entered an order requiring the attendance of Defendant at an OSC hearing set for June 27, 2016. (Docket 184). Now, over a month and a half later, Defendant is seeking the right to appear telephonically through an Ex Parte application premised on a claim that he does not now have the time to file a motion based on regular notice. There are no "exigent" circumstances other than those created by Eade himself; and those are not a basis to grant any ex parte relief .

Defendant has misrepresented facts in his moving papers, has violated Ex Parte pleading requirements; and generally is attempting to again circumvent the Court's orders. The Court should deny this Ex Parte application and require Eade's presence at Court on June 27, 2016.

A. There is no Exigency

"Ex parte applications are a form of emergency relief that will only be granted upon an adequate showing of good cause or irreparable injury to the party seeking relief." K. Clark v. Time Warner Cable, No. CV 07-1797-VBF(RCx), 2007 U.S. Dist. LEXIS 100716, at *2 (C.D. Cal. May 3, 2007) (citing Mission Power Eng'g Co. v. Continental Cas. Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995)). The moving party must be "without fault" in creating the need for ex parte relief or establish that the "crisis [necessitating the ex parte application] occurred as a result of excusable neglect." Id. See also *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F.Supp.488, 492 (C.D. Cal. 1995).

Eade is solely responsible for any exigency in this matter. Eade has been aware of the implications of the Court's order since the date the Court served the parties with the ruling. Eade sent an e-mail to Investorhub.com, Inc.'s Counsel on April 26, 2016, the same date as the Court's Order, threatening to file bankruptcy if

Investorhub.com, Inc. did not withdraw the OSC. (Good Declaration ¶3). If there was any basis for relief, Eade was well aware of it by this date yet chose to do nothing until eleven days prior to the hearing. Here it is clear that Eade had nor has no basis for Ex Parte relief and on this basis alone the motion should be denied.

B. Eade has Not Complied with Local Rule 7-19

Eade is required pursuant to Local Rule 7-19.1 to "...advise the Court in writing and under oath of efforts to contact other counsel and whether any other counsel, after such advice, opposes the application."

On June 15, 2016 at approximately 3:00 p.m., Counsel for Investorhub.com was contacted by Eade's assistant. Counsel indicated at that time that Investorhub.com opposes the application. (Good Declaration ¶4).

Again, on June 16, 2016 at approximately 11:07 am, prior to Eade filing his Ex Parte Motion, Counsel for Investorhub.com sent an e-mail to Eade and his assistant indicating that they oppose the motion. The Ex Parte application and supporting declaration are silent as to the opposition of Investorhub.com, Inc. (Good Declaration ¶5).

There is no reasonable explanation for this omission. This, in and of itself, is basis enough to deny Eade's Ex Parte Motion.

C. Eade's Declaration Misrepresents the Court's Prior Orders and Docket as Eade Has Had Prior Telephonic Appearances

Eade states in his moving papers, but conveniently not in his declaration, that "the Court ...has never granted [Eade] the opportunity to appear by telephone." Eade's representation to this Court is blatantly inaccurate. Eade was granted leave to appear telephonically on three separate occasions; June 27, 2011, December 22, 2011 and July 2, 2012. (Docket Nos. 49, 64 and 68 respectively). The Court subsequently denied further requests premised largely on Eade's prior conduct. Again, there is no reasonable explanation for Eade to make such a statement in his Court filing.

D. Eade Still Maintains an Active Practice in California yet Claims to be Unable to Appear in Court

Finally, Eade claims an inability to be able to comply with the Court's April 26, 2016 order yet still maintains a legal practice in Southern California which employs a legal assistant. (Good Declaration ¶6) Besides the fact that there has been no identification by Eade that he presently employs an assistant in California, it is inconsistent on his part to actively practice in a State yet claim to be unable to abide by Court orders therein.

E. Conclusion

There appears to great liberties being taken with the truth in Eade's Ex Parte Motion and Declaration. For the above stated reasons, Defendant Investorshub.com, Inc. requests that the Court deny the Ex Parte Application.

Dated: June 17, 2016

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