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11 INVESTORSHUB.COM, INC.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

15 KENNETH EADE,  
16 Plaintiff,  
17 v.

Case No. CV11-01315 JAK (CWx)  
**COURT ORDERED BRIEF RE:  
SANCTIONS FOR CONTEMPT**

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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1 Pursuant to the Court’s Order of July 18, 2016, Defendant Investorshub.com,  
2 Inc. hereby files the ordered brief regarding its position on the appropriate sanctions  
3 for the Court to impose on Kenneth Eade.

4 **I. LEGAL ARGUMENT**

5 As the Court stated in its July 18, 2016 Order, “District courts have broad  
6 equitable power to order the appropriate relief in civil contempt proceedings.” SEC  
7 v. Hickey, 322 F.3d 1123, 1128 (9th Cir. 2003) (citing McComb v. Jacksonville  
8 Paper Co., 336 U.S. 187, 193, 69 S.Ct. 497 (1949)); see also Lasar, 399 F.3d at 1109  
9 (noting courts have “inherent authority” to issue sanctions for contempt of its orders).  
10 Even though Kenneth Eade has been previously found in contempt by the Court, the  
11 sanctions thus far taken by the Court to coerce Kenneth Eade’s compliance with its  
12 orders have proven futile and, therefore; Plaintiff recommends an array of sanctions  
13 which are compensatory and coercive in nature to compel Kenneth Eade’s  
14 compliance with the Court’s orders and to compensate Defendant Investorshub.com,  
15 Inc. for costs incurred based on his violative conduct.

16 **A. Civil Sanctions Should Be Awarded to Defendant Investorshub.com,**  
17 **Inc. for Costs incurred by Defendant in Pursuing Kenneth Eade’s**  
18 **Compliance with the Court’s Orders**

19 Kenneth Eade should be required to pay, as a compensatory sanction from the  
20 Court, the attorney’s fees that Defendant has incurred since July 11, 2013 in order for  
21 it to enforce Kenneth Eade’s compliance with the Court’s orders. District Courts  
22 have inherent power and wide discretion to award sanctions as compensation for  
23 losses caused by the opposing parties' failure to comply with a court order. *See* U. S.  
24 v. Nat’l Med. Enter., Inc., 792 F.2d 906, 910-11 (9th Cir. 1986) (affirming \$ 3,000  
25 attorneys' fee award as "compensatory sanction" against opposing counsel for  
26 violating protective order; district court may "impose a wide range of sanctions if  
27 party fails to comply with a discovery order"). E.g., *Chambers v. NASCO, Inc.*, 501  
28 U.S. 32, 45, 111 S. Ct. 2123 (1991) (court may assess sanctions, such as attorneys'

1 fees, for "willful disobedience of a court order") (internal citation and quotation  
2 marks omitted). "Sanctions for civil contempt may be imposed to coerce obedience  
3 to a court order, or to compensate the party pursuing the contempt action for injuries  
4 resulting from the contemptuous behavior, or both." Gen. Signal Corp. v. Donallco,  
5 Inc., 787 F. 2d 1376, 1380 (9<sup>th</sup> Cir. 1986).

6 Defendant Investorshub.com, Inc. has incurred substantial attorney's fees since  
7 the Court first ordered Kenneth Eade to pay the \$49,000 in attorney's fees on  
8 September 27, 2011. This includes costs associated with the contempt proceedings  
9 from April to July 2013. To date, and including this motion, Defendant has incurred  
10 \$34,00.00 in fees and costs associated with filings of motions and responses thereto  
11 in regards to contempt related proceedings. (Please see attached declaration of  
12 Christopher Good). The Court should order Kenneth Eade to pay these fees or a  
13 substantial portion of the fees.

14 **B. Per Diem Fine for Lack of Complete Compliance with the Court July**  
15 **11, 2013 Order**

16 In addition, the Court should impose a per diem fine against Kenneth Eade  
17 until he complies fully and completely with the Court's prior Orders. The Court  
18 should allow for a 20-30 day compliance period before the per diem fine begins.  
19 Before issuing any coercive civil contempt sanction, a court should "consider the  
20 character and magnitude of the harm threatened by continued contumacy, and the  
21 probable effectiveness of any suggested sanction in bringing about the desired  
22 result." United States v. United Mine Workers of America, 330 U.S. 258, 304, 67  
23 S.Ct 677, 701 (1947); see also United States v. Bright, 2008 WL 5687440 \*9 (D.  
24 Hawaii Dec. 24, 2008) (noting that generally the minimum sanction necessary to  
25 obtain compliance should be imposed) (citations omitted). In this regard, in fixing the  
26 amount of a coercive civil contempt fine, courts should "consider the amount of the  
27 [respondent's] financial resources and the consequent seriousness of the burden to  
28

1 that particular [respondent].” United Mine Workers, 330 U.S. at 303-04; V.L. v.  
2 Wagner, 2009 WL 4282079 \*4 (N.D. Cal. Nov. 25, 2009).

3 The per diem fine should be consistent with trying to coerce Kenneth Eade into  
4 “complete” compliance with the Court’s July 11, 2013 order. As such, Defendant  
5 Investorshub.com, Inc. recommends that the Court order an \$100 per diem sanction  
6 for failure to comply with the Court’s July 11, 2013 and that the sanction take effect  
7 20-30 days after the Court’s Sanction Order and that the sanction continue until a  
8 time in which the Court is satisfied with the filings provided by Kenneth Eade.  
9 Further, if Kenneth Eade fails to provide subsequent filings that are in “complete”  
10 compliance that the Court reinstate the per diem sanction upon notice to Kenneth  
11 Eade that his filing(s) are not “complete” and thus subject to further compliance  
12 oversight by the Court.

13 **C. Court Should Require Kenneth Eade to Sign Over Rights to the French**  
14 **Property to a Receiver who Can then Handle the Distribution of the**  
15 **Sale Proceeds**

16 The Court should order an immediate turnover of any and all interest of  
17 Kenneth Eade in the real property in France. The order should provide Kenneth Eade  
18 20 - 30 calendar days within which to turn over his rights/interest in the French  
19 property to a Receiver of the Court’s choosing. If the turnover is not completed  
20 within that time period, and the Receiver has notified the Court of the non-  
21 compliance, Defendant Investorshub.com, Inc. recommends that the Court set a  
22 hearing on an order to show cause for contempt of the turnover order.

23 Just cause supports an order for turnover of Kenneth Eade’s rights in the  
24 French Property. As identified by the Court, Kenneth Eade was required to “submit  
25 monthly updates to Defendant’s counsel regarding the status of the sale of real  
26 property in France which Plaintiff held an interest. The purpose of these reports was  
27 to permit Defendant to follow the sales process, given Plaintiff’s representation that  
28 the proceeds from the planned sale would be applied to satisfy the Order.” (Court

1 Civil Minutes Docket 197 pg. 1) The Court has noted in this same Order that  
2 “Plaintiff has provided no information regarding the encumbrances that he has  
3 applied to the French real property. Nor has he justified his apparent commitment to  
4 make payments to the IRS and the DOJ from any sales proceeds, indirect violation of  
5 the July 11 Order.” (Court Civil Minutes Docket 197 pg. 6) None of the statements  
6 filed by Kenneth Eade regarding the French property have been verified by him, and  
7 milestone dates associated with the liquidation of the property have been consistently  
8 delayed through these proceedings. There is no basis for the Court to believe that  
9 Kenneth Eade has or will undertake diligent efforts to liquidate the property or make  
10 any payment to Defendant Investorshub.com, Inc. upon the sale of the French  
11 property.

12 By putting Kenneth Eade’s ownership interest in the property in a  
13 Receivership, the Court mitigates any and all concerns regarding truthful updates on  
14 the status of the property and compliance with the Court’s initial September 27, 2011  
15 Order by this Court to pay the initial \$49,000.

16 **D. Reporting Conduct to the State Bar**

17 It is the duty of this Court to refer Kenneth Eade, as a Member of the  
18 California State Bar, to the Standing Committee on Professional Conduct. The  
19 Southern District of California Local Rule States as follows:

20 “11-6. Discipline.

21 (a) General. In the event that a Judge has cause to believe that an attorney has  
22 engaged in unprofessional conduct, the Judge may **do any or all** of the following:

23 (1) Initiate proceedings for civil or criminal contempt under Title 18 of the  
24 United States Code and Rule 42 of the Federal Rules of Criminal Procedure;

25 (2) Impose other appropriate sanctions;

26 (3) **Refer the matter to the appropriate disciplinary authority of the state**  
27 **or jurisdiction in which the attorney is licensed to practice;**

28

1 (4) **Refer the matter to the Court’s Standing Committee on Professional**  
2 **Conduct;** or

3 (5) Refer the matter to the Chief Judge for her or him to consider whether to  
4 issue an order to show cause under Civ. L.R. 11-7.” (emphasis added)

5 Here, there is no question that the conduct of attorney Kenneth Eade has been  
6 unprofessional. Defendant Investorshub.com, Inc. believes that the Local Rules  
7 require the Court in this circumstance to report Kenneth Eade. The State Bar will  
8 decide what remedy or sanction they will impose, if any, on Kenneth Eade for his  
9 conduct.

10 **E. Conditional Incarceration Is Not Sought in This matter**

11 Conditional incarceration as a civil contempt sanction is a serious step, often  
12 viewed as a remedy of last resort. See *Combs v. Ryan’s Coal Co., Inc.*, 785 F.2d 970,  
13 981 (11th Cir. 1986). Nevertheless, courts have routinely ordered confinement in  
14 cases, such as this one, where the underlying conduct involves a blatant refusal to  
15 turnover a valuable asset or documents and records. See *Affordable Media*, 179 F.3d  
16 at 1233 (affirming district court’s contempt order of confinement where contemnors  
17 did not adequately show it was impossible for them to repatriate foreign trust assets  
18 as ordered by the preliminary injunction); *SEC v. Khanh Tung Luong*, 2009 WL  
19 4282101 \*3-4 (E.D. Cal. Nov. 19, 2009) (holding confinement as the “only viable”  
20 contempt remedy for failure to turnover income records in response to IRS summons  
21 finding “no reason” to believe that a suspected tax evader would be coerced by  
22 further monetary assessments); *Rose*, 437 F.Supp.2d at 1173-74 (ordering coercive  
23 confinement for failure to produce records in response to IRS summons); *Elmas*  
24 *Trading Corp.*, 824 F.2d at 732-33 (affirming district court’s contempt remedy of  
25 incarceration for failure to produce documents and other materials in violation of  
26 court order).

27 Kenneth Eade currently resides in either Russia or France and is well outside of  
28 the jurisdiction of this Court for the purposes of incarceration. However, while this is

1 not a remedy that is recommended, it is important to note that it would be appropriate  
2 in this matter under other circumstances in order to coerce compliance with the  
3 Court’s Orders, including but not limited to orders to appear in person.

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5 **II. CONCLUSION**

6 For the reasons identified above, Defendant Investorshub.com, Inc.  
7 recommends the aforementioned sanction.

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10 Dated: August 1, 2016

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THOMAS & LOCICERO PL

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By /s/ Deanna Shullman  
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By /s/ Christopher Good  
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