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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 KENNETH EADE,
11 Plaintiff,
12 v.
13 INVESTORSHUB.COM, INC., *et al.*,
14 Defendants.
15

Case No. 11-cv-01315 JAK (CWx)

**PLAINTIFF KENNETH EADE’S EX
PARTE MOTION TO APPEAR BY
TELEPHONE**

Date: June 27, 2016
Time: 2:15 p.m.
Courtroom: 750
Judge: Hon. John A. Kronstadt

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19 Plaintiff KENNETH EADE, hereby moves this Court ex parte for an Order
20 allowing him to appear at the hearing on the Order to Show Cause re Contempt set by the
21 Court on June 27, 2016 at 2:15 p.m., pursuant to Local Rule 7-19, in that good cause
22 exists for the appearance of counsel by telephone, as counsel resides outside the United
23 States and cannot enter the United States.

24 Said motion is based on this motion, the attached declaration of Kenneth Eade, the
25 attached memorandum of points and authorities, the papers and records on file herein and
26 upon such other and further evidence as the Court may consider at the hearing of this
27 motion.
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1 This motion is being made ex parte, due to the lack of time for it to be heard on
2 regular notice, and the Court's procedures with regard to applications to appear by
3 telephone.

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5 DATED: June 15, 2016

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/s/ Kenneth Eade
KENNETH G. EADE
Attorney for Plaintiff, In Pro Per

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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 **I. EXCEPTIONAL CIRCUMSTANCES EXIST FOR ALLOWING AN**
4 **APPEARANCE BY TELEPHONE.**

5 The Court’s procedures for telephonic appearances are as follows:

6 “...The Court does not entertain a telephonic appearance for any other
7 hearing unless it is an exceptional and unanticipated circumstance. Any
8 request for a telephonic appearance due to such circumstances must be e-
9 filed at least five (5) court days before the scheduled hearing and shall
10 include a declaration from counsel setting forth the basis for the request with
11 a proposed order. The Court does not use Court Call. If the request is
12 granted, the order will include the information for the call. Please note that
13 cell phones or the use of speaker phones are not permitted for any telephonic
14 appearance.”

15 The Court is aware that the Plaintiff resides outside of the United States, but has
16 never granted the Plaintiff the opportunity to appear by telephone. The Plaintiff has
17 appeared in person every time the Court has ordered.

18 This time, it is impossible for the Plaintiff to appear due to exceptional and
19 unanticipated circumstances, in that Plaintiff cannot set foot in the United States until the
20 current Grand Jury investigation into his former client’s affairs has been concluded.
21 There is a remarkable difference between the options of the Plaintiff to defend himself
22 from any possible charges given the current status quo of Plaintiff being a full-time
23 resident of a foreign country, and those he would have if he were to be present in the
24 United States, which would result in Plaintiff being unable to defend himself in any
25 possible criminal proceeding. See Judge Rakoff’s article on why innocent people plead
26 guilty in the federal system: Rakoff, Jed S. (November 20, 2014) *Why Innocent People*
27 *Plead Guilty*, The New York Review of Books. Judge Rakoff, in his article, points out
28 the fact that a federal prosecutor can “**bludgeon defendants into coerced plea**

1 **bargains,”** by detaining the defendant, setting high bail, the limited time to work with
2 trial counsel to prepare a defense while detained, and the leverage of minimum sentences
3 and sentencing guidelines.

4 “...Guidelines, along with mandatory minimums, were causing the virtual
5 extinction of jury trials in federal criminal cases. Thus, whereas in 1980, 19
6 percent of all federal defendants went to trial, by 2000 the number had
7 decreased to less than 6 percent and by 2010 to less than 3 percent, where it
8 has remained ever since.

9 “The reason for this is that the guidelines, like the mandatory
10 minimums, provide prosecutors with weapons to bludgeon defendants into
11 effectively coerced plea bargains. In the majority of criminal cases, a
12 defense lawyer only meets her client when or shortly after the client is
13 arrested, so that, at the outset, she is at a considerable informational
14 disadvantage to the prosecutor. If, as is very often the case (despite the
15 constitutional prohibition of “excessive bail”), bail is set so high that the
16 client is detained, the defense lawyer has only modest opportunities, within
17 the limited visiting hours and other arduous restrictions imposed by most
18 jails, to interview her client and find out his version of the facts.

19 “The prosecutor, by contrast, will typically have a full police report,
20 complete with witness interviews and other evidence, shortly followed by
21 grand jury testimony, forensic test reports, and follow-up investigations.
22 While much of this may be one-sided and inaccurate—the National
23 Academy of Science’s recently released report on the unreliability of
24 eyewitness identification well illustrates the danger—it not only gives the
25 prosecutor a huge advantage over the defense counsel but also makes the
26 prosecutor confident, maybe overconfident, of the strength of his case.

27 “...Though there are many variations on this theme, they all prove the
28 same basic point: the prosecutor has all the power. The Supreme Court’s

1 suggestion that a plea bargain is a fair and voluntary contractual arrangement
2 between two relatively equal parties is a total myth: it is much more like a
3 “contract of adhesion” in which one party can effectively force its will on
4 the other party.” *Id.*

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6 DATED: June 15, 2016

Respectfully submitted,

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8 /s/ Kenneth Eade

9 KENNETH G. EADE

10 *Attorney for Plaintiff, In Pro Per*
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DECLARATION OF KENNETH EADE

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3 I, KENNETH EADE, hereby declare as follows:

4 1. That I am an attorney at law, duly licensed to practice before this Court, and,
5 if called upon as a witness, could competently testify as to the following facts, within my
6 personal knowledge.

7 2. That, since January 2007, I have been a resident of France. I have no
8 residence in the United States, no property, and no ties to the jurisdiction. I am retired
9 from the practice of law and am in the process of winding down my practice, which now
10 exists of one active case that will be resolved by June 22, 2016.

11 3. As the Court has been made aware, my former clients, Zirk Engelbrecht and
12 Stephen Wilshinsky, and their business and business contacts are the subject of a current
13 Grand Jury Investigation by the United States Department of Justice in Ohio. Both Mr.
14 Engelbrecht and Mr. Wilshinsky have plead guilty to securities fraud charges. Mr.
15 Engelbrecht is presently in custody on what will be a substantial prison sentence of
16 approximately 15 years and Mr. Wilshinsky is facing a sentence of approximately
17 4 years.

18 4. At my last personal appearance in this Court in January of this year,
19 pursuant to the Court's order, I came to the States because I had entered into a proffer
20 agreement with the Department of Justice, which allowed me to travel to the United
21 States for the proffer meeting and back, and the DOJ promised that they would not seek
22 my arrest in conjunction with the investigation. I appeared in this Court before traveling
23 to Ohio for the proffer. I have no such assurance at this time that this will be the case if I
24 travel to the United States. Other than this matter, I have no reason to travel to the United
25 States and, due to these exceptional circumstances, I cannot assure the Court that I will be
26 able to personally appear if I try to do so. I can, however, assure the Court that I will be
27 available by telephone, and will answer all of the Court's (and counsel's) questions
28 during the June 27th hearing. Therefore, the likelihood of my appearing by telephone is

1 100% and the likelihood of my personal appearance if I should attempt to enter the
2 United States is unknown.

3 5. I am not in the United States at this time, I cannot travel to the United States,
4 and respectfully request the Court to allow me to attend by telephone. I want to appear at
5 this hearing and can accomplish by telephone everything that could be accomplished if I
6 were to appear in person.

7 6. My office has given notice of this ex parte application by telephone and
8 email to opposing counsel, whose name, address, telephone number and email address is:

9 **FOWLER & GOOD LLP**
10 CHRISTOPHER B. GOOD
11 cgood@fowlergood.com
12 15303 Ventura Blvd., 9th Floor
13 Sherman Oaks, CA 91423
14 Telephone: 818-302-3480

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18 I declare under penalty of perjury under the laws of the United States of America
19 that all of the foregoing is true and correct this 15th day of June 2016.

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22 /s/ Kenneth Eade
23 KENNETH G. EADE
24 *Attorney for Plaintiff, In Pro Per*
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action, my business address is 4654-B E. Avenue S, Suite 213, Palmdale, California 93552.

On June 16, 2016, I served the foregoing documents described as:

PLAINTIFF KENNETH EADE’S EX PARTE MOTION TO APPEAR BY TELEPHONE

on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

BY U.S. MAIL: I enclosed the documents in a sealed envelope or package address to the above-named persons at the addresses exhibited therein and (specify one):

I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firms practice for collecting and processing correspondence for mailing. On the same day that correspondence or other service document is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage thereon fully prepaid.

I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

BY CM/ECF: The document was electronically served on the parties to this action via the mandatory United States District Court of California CM/ECF system upon electronic filing of the above-described document.

Executed this 16th day of June, 2016, at Palmdale, CA.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

/s/ Nichelle Guzmán
NICHELLE GUZMAN