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10 Attorneys for Plaintiff
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11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 ALAN DEBONNEVILLE,

16 Plaintiff,

17 vs.

18 BROCK PIERCE,

19 Defendant.

) No. CV 07-03776 R (MANx)

) EX PARTE NOTICE OF MOTION,
) MOTION FOR SANCTIONS, AND
) MEMORANDUM IN SUPPORT
) THERETO AND [PROPOSED]
) ORDER

) Date Filed: April 30, 2008

) Trial Date: May 20, 2008

) Date of Hearing: May 5, 2008

1 Plaintiff ALAN DEBONNEVILLE (“Debonneville”) files this his Ex Parte
2 Notice of Motion, Motion for Sanctions and Memorandum in Support Thereto against
3 BROCK PIERCE (“Pierce”) and respectfully shows as follows.

4
5 **I. INTRODUCTION**

6 1. Since April 10, 2008, Pierce has been in breach of the settlement
7 agreement he signed and then verbally agreed to on the record before Judge Margaret
8 Nagle. Also since that time, not only has Pierce’s counsel refused to cooperate in the
9 scheduling of Pierce’s deposition but now they have failed to produce Pierce after
10 receiving a proper deposition notice. Even though Pierce continues to remain in breach
11 of the settlement agreement and even though the Court scheduled a Preliminary
12 Injunction hearing for May 5, 2008, Pierce has refused to appear for his deposition.

13
14 **II. FACTS**

15 2. As this Court is aware, Pierce has been in breach of the Memorandum of
16 Settlement, which he signed on March 11, 2008, since April 10, 2008.

17 3. As of today, Pierce has still not paid the amount he was supposed to pay
18 by April 10, 2008.

19 4. As a result of Pierce’s failure to pay, Debonneville’s counsel made
20 numerous requests for deposition dates for Pierce’s deposition.

21 5. On April 11, 2008, Debonneville’s counsel sent an email to Pierce’s
22 counsel requesting that Pierce’s counsel contact Debonneville’s counsel immediately
23 so that they could discuss scheduling a deposition date for Pierce (Exhibit 1).

24 6. On April 11, 12, and 13, 2008, Debonneville’s counsel left telephone
25 messages for both Mr. Hayes and Ms. Scott. Those telephone calls were not returned.

26 7. On April 13, 2008, Debonneville’s counsel emailed Pierce’s counsel
27 advising Pierce’s counsel that 3 attempts had been made to coordinate the scheduling
28 of the depositions of Mr. Pierce. The email advised that if no response was given, that

1 on the following Monday a deposition notice would be sent out (Exhibit 2). No
2 response was received to that email.

3 8. On April 14, 2008, Debonneville's counsel sent an email to Pierce's
4 counsel advising them that Debonneville's counsel had left several telephone
5 messages which Pierce's counsel had not returned (Exhibit 3).

6 9. On April 14, 2008, Debonneville's counsel faxed the Third Notice of
7 Intent to Take Oral and Videotaped Deposition of Brock Pierce to Pierce's counsel
8 (Exhibit 4). No response was ever received to that letter.

9 10. To date, no motion to quash has ever been filed.

10 11. On April 25, 2008, after this Court granted a Temporary Restraining
11 Order and a Writ of Attachment against Pierce, Debonneville's counsel reminded
12 Pierce's counsel that Pierce's deposition had been noticed for the following Monday,
13 April 28, 2008. Pierce's counsel advised that they were refusing to produce Pierce for
14 his deposition and that they would be filing some sort of objection.

15 12. On April 25, 2008 at 7:04 p.m. (PST), Pierce's counsel emailed
16 Debonneville's counsel a document entitled objections by Brock Pierce to Alleged
17 Notice of Deposition for April 28, 2008 (Exhibit 5).

18 13. On Saturday, April 26, 2008, at 6:33 a.m. (PST), Debonneville's counsel
19 sent an email to Pierce's counsel stating that the objection was improper, that a
20 Motion to Compel and Motion for Sanctions would be filed as a result of the refusal to
21 produce Pierce for deposition, and once again requested deposition dates for Pierce
22 (Exhibit 6).

23 14. On April 28, 2008 at 7:00 p.m., Pierce's counsel responded to the
24 previous email and now took the position that since no accelerated deposition was
25 requested from the Court, Pierce's counsel was refusing to provide Pierce for his
26 deposition prior to the upcoming injunction hearing on May 5, 2008 (Exhibit 7).

1 15. At no time did Debonneville's counsel agree to release Pierce from the
2 deposition notice which was sent on April 14, 2008 to which no motion to quash has
3 ever been filed.

4 **III. ARGUMENT AND AUTHORITIES**

5 16. As is indicated above, Pierce has repeatedly refused to cooperate in the
6 scheduling of his deposition.

7 17. Given its inherent power, the Court may sanction a person for conduct in
8 "bad faith," or "willful disobedience" of a court order, or for "fraud on the Court."
9 *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-45, 111 S. Ct. 2123, 2132-33 (1991). The
10 use of the Court's inherent powers are appropriate when conduct is not effectively
11 sanctionable under an existing rule or statute. *Toon v. Wackenhut Coor Corp.*, 255 3d
12 950, 952 (5th Cir. 2001). Further, an attorney's negligent or reckless failure to perform
13 responsibilities as an officer of the Court can justify sanctions under the Court's
14 inherent power. *Republic of the Philippines v. Westinghouse Delect Corp.*, 43 F.3d
15 65, 74 N. 11 (3d Cir. 1994). Also, the intentional advancement of a contention made
16 for an ulterior purpose such as harassment or delay is indicative of bad faith. *Ford v.*
17 *Temple Hosp.*, 790 F.2d 342, 347 (3d Cir. 1986).

18 18. Finally, Fed. R. Civ. P. 11 allow for sanctions when a pleading, written
19 motion or other paper is being presented for any improper purpose, such as to harass,
20 cause unnecessary delay, or needlessly increase the cost of litigation. Fed. R. Civ. P.
21 11 also allows a court to impose a sanction which suffices to deter repetition of a
22 conduct or comparable conduct by others similarly situated. That rule states that a
23 sanction may include non-monetary directives; order to pay a penalty into court; or, if
24 imposed on motion and warranted for effective deterrence, an order directing payment
25 to the movement of part or all of the reasonable attorneys fees and other expenses
26 directly resulting from the violation.

27 19. Pursuant to Fed. R. Civ. P. 30, a party may notice another party's
28 deposition by sending a deposition notice to the party's counsel. If party's counsel

1 disagrees with the deposition notice, a motion to quash must be filed pursuant to Fed.
2 R. Civ. P. 45e(3)(A). In order for a motion to quash to be timely, it must not only be
3 filed, but must be heard prior to the deposition date. *King v. Fidelity Nat'l Bank of*
4 *Baton Rouge* 712 F2d 189, 191 (5th Cir. 1983).

5 20. Debonneville's counsel sent a proper notice for deposition to Pierce's
6 counsel on April 14, 2008, and no motion to quash was ever filed relating to that
7 motion. Amazingly, at 7:00 p.m. on Friday, April 25, 2008, Pierce's counsel
8 forwarded what they called an Objection by Brock Pierce to Alleged Notice of
9 Deposition for April 28, 2008 (Exhibit 5). Even more amazing, after filing that
10 Objection, Pierce's counsel has now taken the position that they do not need to
11 provide Pierce for his deposition because no expedited deposition was requested from
12 the Court (Exhibit 7).

13 21. It is clear from Pierce's and Pierce's counsel's actions that they have
14 intentionally and maliciously avoided making Pierce available for his deposition.
15 Further, Pierce's counsel's actions of waiting until Friday at 7:00 p.m. to assert any
16 sort of objection, when the deposition has been scheduled for Monday, is a clear
17 indication of bad faith in furtherance of their efforts to delay Debonneville's
18 legitimate attempts to obtain information regarding Pierce's breach of the settlement
19 agreement as well as Pierce's actions which formulate the basis of the Injunction
20 which is being requested in this case.

21 **IV. CONCLUSION**

22 22. As a result of Pierce and Pierce's counsel's flagrant disregard for the
23 mandates contained in the Federal Rules of Procedure, Debonneville requests the
24 following sanctions:

25 a. Pierce's counsel be required to wire \$10,000 within 3 days of entry
26 of this Order to Debonneville's counsel;

27 b. Pierce be required to wire \$10,000 within 3 days of entry of this
28 Order to Debonneville's counsel;

1 c. Pierce be required to wire \$5,000 within 3 days of entry of this
2 Order to Debonneville's counsel in attorneys fees and costs related to the
3 pursuit of this Motion;

4 d. Pierce be ordered to attend his deposition for a date chosen by
5 Debonneville's counsel during the week of May 5 or May 12;

6 e. Pierce appear for 3 consecutive days of deposition, 7 hours each
7 day;

8 f. Pierce produce documents responsive to any document request
9 attached to any deposition notice by no later than 48 hours prior to his
10 deposition; and

11 g. Pierce not be able to assert any objection, or such objection is
12 hereby overruled, to requests for production or specific deposition questions
13 which inquire as to Pierce's personal wealth, the location of his assets, or any
14 other questions which relate to Debonneville's attempts to attach Pierce's
15 assets.

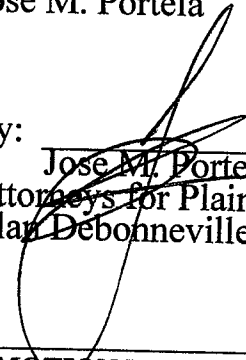
16 Dated: April 30, 2008

17 Respectfully submitted,

18 **SIDLEY AUSTIN LLP**
19 Peter I. Ostroff
Sean A. Commons

20 Attorneys for Plaintiff
21 Alan Debonneville

22
23 **THE BECKHAM GROUP P.C.**
24 Blake L. Beckham
Jose M. Portela

25
26 By: 
27 Jose M. Portela
28 Attorneys for Plaintiff
Alan Debonneville

PROOF OF SERVICE

1
2 **STATE OF TEXAS**)
3) **ss.**
4 **COUNTY OF DALLAS**)

5 I am employed in the County of Dallas, State of Texas. I am over the age of 18
6 and not a party to the within action. My business address is THE BECKHAM GROUP,
3400 Carlisle, Suite 550, Dallas, Texas 75204.

7 On April 30, 2008, I served the foregoing document described as **EX PARTE**
8 **NOTICE OF MOTION, MOTION FOR SANCTIONS, AND MEMORANDUM**
9 **IN SUPPORT THERETO** on the interested parties in this action by placing a true
and correct copy thereof enclosed in a sealed envelope addressed as follows:

<p>10 Francine Friedman Griesing 11 GREENBERG TRAUIG, LLP 2700 Two Commerce Square 2001 Market Street 12 Philadelphia, Pennsylvania 19103 Telephone: (215) 988-7833 13 Facsimile: (215) 717-5245</p>	<p>John M. Gatti David A. Theaker Diana Scott Matt Hayes GREENBERG TRAUIG, LLP 2450 Colorado Avenue, Suite 400E Santa Monica, CA 90404 Telephone: (310) 586-7700 14 Facsimile: (310) 586-7800</p>
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15 I am "*readily familiar*" with the firm's practice of collection and processing
16 correspondence for mailing. It is deposited with the U.S. postal service on that same
17 day in the ordinary course of business. I am aware that on motion of a party served,
service is presumed invalid if the postal cancellation date or postage meter date is
more than one day after the date of deposit for mailing in the affidavit.

18 [] **(BY U.S. MAIL)** I served the foregoing document(s) by U.S. Mail, as follows: I
19 placed true copies of the document(s) in a sealed envelope addressed to each
20 interested party as shown above. I placed each such envelope with postage
thereon fully prepaid, for collection and mailing at THE BECKHAM GROUP,
21 Dallas, Texas. I am readily familiar with THE BECKHAM GROUP's practice for
collection and processing of correspondence for mailing with the U.S. Postal
22 Service. Under that practice, the correspondence would be deposited in the
U.S. Postal Service on that same day in the ordinary course of business.

23 [] **(BY HAND DELIVERY)** I caused the documents to be delivered by hand by First
Legal Messenger Service to the addressees shown above.

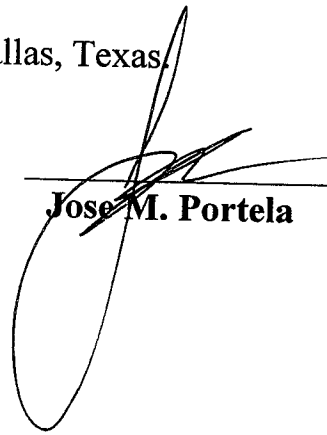
24 [x] **VIA FACSIMILE** (CCP §§ 1012.5, 1013). I caused the said document(s) to
25 be transmitted by facsimile machine to the number indicated after address(es)
noted herein.

26 [] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of
27 this court at whose direction the service was made.

28 [] **(STATE)** I declare under the laws of the State of California that the above is true
and correct.

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EXECUTED on April 30, 2008, at Dallas, Texas.



A handwritten signature in black ink, appearing to read 'Jose M. Portela', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jose M. Portela