24

1	
2	
3	
4	
5	
6	
7	UNITED STATES DISTRICT COURT
8	CENTRAL DISTRICT OF CALIFORNIA
9	GREEN PAYMENT SOLUTIONS, ) NO. CV 18-01463-DSF (AS)
10	LLC, )
11	Plaintiff, ) CERTIFICATION AND ORDER
12	V. TO SHOW CAUSE RE CONTEMPT
	FIRST DATA MERCHANT SERVICES )
13	CORPORATION, et. al.,
14	Defendants. )
15	

16 IT IS ORDERED that Jesse Cretaro, an individual who has failed 17 to comply with subpoenas issued by the Defendants and court orders, 18 shall appear on June 13, 2019 at 3:00 p.m., in the Courtroom of the 19 Honorable Dale S. Fischer, United States District Judge, First Street Courthouse, 350 West 1<sup>st</sup> Street, Courtroom 7D, Los Angeles, 20 21 California, and then and there shall show cause, if there be any, 22 why Jesse Cretaro should not be adjudged in contempt based upon the 23 facts this Court has certified.

If third party Jesse Cretaro objects to being held in contempt, he may file objections no later than May 30, 2019, and Defendants may file a response or memorandum supporting contempt no later than June 6, 2019. Defendants shall promptly serve this Order on Jesse Cretaro by: (a) personal delivery of this document to any adult present at the following address: 5200 Wilshire Boulevard, Apt. 663, Los Angeles, CA 90036; and (b) mailing a copy of the document as follows: Jesse Cretaro 5200 Wilshire Boulevard, Apt. 663 Los Angeles, California 90036;

10 In accordance with 28 U.S.C. section 636(e), the Magistrate 11 Judge certifies the following facts:<sup>1</sup>

13 1. Following a telephonic hearing on December 18, 2018, this 14 Court granted Defendants' unopposed request for an Order directing 15 third party Jesse Cretaro to provide responsive documents to a subpoena commanding production of documents on or before January 4, 16 17 2019 and to appear for a deposition (as set forth in the amended 18 deposition notice) on January 16, 2019 at 9:00 a.m. The Court's 19 electronic docket reflects that the December 18, 2018 Order, which 20 was mailed to third party Jesse Cretaro at 5200 Wilshire Blvd.,

28

21

1

2

3

4

5

6

7

8

9

12

<sup>22</sup> The question of whether Jesse Cretaro should be held in contempt on these certified facts, and the question of the 23 appropriate sanctions to be imposed, if any, are commended to the District Judge for her consideration. See 28 U.S.C. § 636(e); see 24 also Bingman v. Ward, 100 F.3d 653, 658 (9th Cir. 1996); Taberer v. Armstrong World Industries, Inc., 954 F.2d 888, 903-908 (3rd Cir. 25 1992). The limited contempt powers granted to Magistrate Judges in the "Federal Courts Improvement Act of 2000" do not extend to the 26 circumstances presented in the instant case. See 28 U.S.C. § 636(e). 27

Apt. 663, Los Angeles, CA 90036, was returned to the Court as undeliverable mail on January 9, 2019. (Dkt. Nos. 57-59).

2. On January 25, 2019, the Court held a telephonic hearing 4 regarding Defendants' unopposed request for an order to show cause 5 why Jesse Cretaro should not be held in contempt and directed 6 counsel to file an application for order to show cause with 7 documentation supporting their contention that Mr. Cretaro was 8 residing at 5200 Wilshire Blvd., Apt. 663, Los Angeles, CA 90036, 9 10 the address at which Mr. Cretaro was served with subpoenas and the address to which the Court's December 18, 2018 Order was mailed. 11 (Dkt. Nos. 61; 63 at 5). 12

14 3. The Court's electronic docket reflects that on February 15 19, 2019, Defendants filed a "Notice of Application for Order to 16 Show Cause re Contempt and Sanctions, including Attorneys Fees" 17 against Jesse Cretaro, (Dkt. No. 63), setting forth the following 18 facts:

a. On October 25, 2018, Jesse Cretaro was served with
subpoenas to produce documents no later than November 9, 2018 and
to appear for a deposition on November 16, 2018. (Dkt. No. 63-1).

b. On December 18, 2018, the Court issued an order directing third party Jesse Cretaro to provide responsive documents to a subpoena on or before January 4, 2019 and to appear for a deposition on January 16, 2019 at 9:00 a.m.

28

1

2

3

13

3

c. On January 16, 2019, Jesse Cretaro failed to appear
 for the scheduled deposition. (Dkt. No. 63-2).

On February 12, 2019, Defendant's investigator and 4 d. 5 registered process server reported that (1) according to the United 6 States Postal Service, Mr. Cretaro continues to receive mail at, and has not submitted a change of address for, 5200 Wilshire Blvd., 7 Apt. 663, Los Angeles, CA 90036; and (2) management and leasing 8 personnel for 5200 Wilshire Boulevard, Los Angeles, California 9 10 confirmed that Jesse Cretaro currently resides at, and is listed as a current resident in the electronic directory for, 5200 Wilshire 11 Boulevard, Apt. 663, Los Angeles, California 90036. (Dkt. Nos. 62-12 13 1, 63-4).

d. Counsel for defendants asserts that, between January
2 and January 14, 2019, letters addressed to Mr. Cretaro at 5200
Wilshire Blvd., Apt. 663, Los Angeles, CA 90036 were returned
unopened. A returned envelopes contained the handwritten word,
"REFUSED," and the following statement: "RETURN TO SHIPPER REASON
FOR RETURN: RECEIVER DID NOT ORDER, REFUSED ORIGINAL RECEIVER:
JESSE CRETARO." (Dkt. No. 63-3).

DATED: May 7, 2019

3

14

22

23

24

25

26

27

28

/s/ ALKA SAGAR UNITED STATES MAGISTRATE JUDGE

4