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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUAN ROBERTO ZURITA,

Plaintiff,

v.

ASSET & CAPITAL MANAGEMENT
GROUP, A California Corporation, and DOES
1-10, Inclusive,

Defendant.

Civil No. 09cv616-WQH (CAB)

**ORDER SETTING SECOND OSC
REQUIRING PERSONAL
APPEARANCE OF THAI HAN, AGENT
FOR SERVICE OF PROCESS OF
ASSET & CAPITAL MANAGEMENT
GROUP
[Doc. No. 26]**

On August 19, 2009, Plaintiff JUAN ROBERTO ZURITA filed an application for an order to show cause why a subpoena *duces tecum* should not be enforced. [Doc. No. 13.] A Subpoena in a Civil Case dated July 7, 2009 [Doc. Nos. 16 and 17], was served on the Custodian of Records of (non-appearing/defaulted Defendant) ASSET & CAPITAL MANAGEMENT GROUP on July 14, 2009 [Doc. No. 13-3, Exhibit 8; Doc. No. 16]. Plaintiff having duly served the subpoena upon the Custodian of Records of ASSET & CAPITAL MANAGEMENT GROUP, and ASSET & CAPITAL MANAGEMENT GROUP having failed to comply within the period designated in the subpoena, this Court issued on Order to Show Cause (“OSC”) and ordered the following:

1. ASSET & CAPITAL MANAGEMENT GROUP shall appear on **September 11, 2009**, at **2:00 p.m.** in Courtroom E of the United States Courthouse located at 940 Front St. San Diego, CA, 92101, and **SHOW CAUSE** why it should not be compelled to comply with the subpoena issued to it;
2. On or before **August 27, 2009**, Petitioner shall serve ASSET & CAPITAL MANAGEMENT GROUP with a copy of this Order to Show Cause along with the Application on which the Order is based and all supporting documents; and
3. On or before **September 8, 2009**, ASSET & CAPITAL MANAGEMENT GROUP shall file a response to this Order to Show Cause as to why the subpoena *duces*

1 *tecum* should not be enforced.
2 [Doc. No. 19.]

3 On August 29, 2009, plaintiff filed an ex parte application for a new hearing date for the OSC
4 because plaintiff's counsel was unable to serve the OSC and underlying papers on ASSET & CAPITAL
5 MANAGEMENT GROUP within the time period ordered by the court. [Doc. No. 20.] On September 1,
6 2009, this Court granted the ex parte application and reset the OSC date for October 9, 2009, at 1:30
7 p.m. [Doc. No. 21.] The Court's orders and the underlying application were then served on ASSET &
8 CAPITAL MANAGEMENT GROUP. [Doc. Nos. 22 and 23.]

9 A hearing was held before Magistrate Judge Cathy Ann Bencivengo on October 9, 2009, at 1:30
10 p.m. Craig Fagan, Esq., appeared on behalf of plaintiff. ASSET & CAPITAL MANAGEMENT
11 GROUP did not appear. On October 9, 2009, this Court granted plaintiff's request for an order
12 enforcing the subpoena and directed ASSET & CAPITAL MANAGEMENT GROUP to produce copies
13 of the documents described in Exhibit 1 of the subpoena [Doc. Nos. 16 and 17], to Craig Fagan, attorney
14 for plaintiff, at 3505 Camino del Rio South, Suite 250, San Diego, CA 92108, on or before November
15 13, 2009. [Doc. No. 25.] In the order, ASSET & CAPITAL MANAGEMENT GROUP was notified that
16 failure to comply with the Order may subject it to sanctions for contempt of court. [Id.] Plaintiff served
17 the Order on ASSET & CAPITAL MANAGEMENT GROUP. [Doc. No. 26-1.]

18 On November 13, 2009, plaintiff filed an Ex Parte Application to Set a Motion for OSC re
19 Contempt for the President and Owner of Defendant Asset & Capital Management Group, Thai Han, due
20 to defendant's failure to comply with the Court's Order's of October 9, 2009 (hereinafter the "second
21 OSC request"). [Doc. No. 26.] Plaintiff requests that a second OSC hearing be set and that Thai Han be
22 ordered to personally appear at the OSC hearing. [Doc. No. 26 at 5.] According to plaintiff, Thai Han is
23 the owner, president and agent for service of process of ASSET & CAPITAL MANAGEMENT
24 GROUP. [Doc. No. 26-1 at 2, 3.]

25 FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED:

26 Plaintiff's second OSC request is GRANTED IN PART.

27 **THAI HAN**, in his capacity of agent for service of process for ASSET & CAPITAL
28 MANAGEMENT, **IS HEREBY ORDERED TO APPEAR IN PERSON** in this Court, located at 940

1 Front St., San Diego, California, Department E, on **December 16, 2009**, at **9:30 a.m.** to show cause as to
2 why ASSET & CAPITAL MANAGEMENT GROUP has failed to respond to the subpoena. Plaintiff
3 shall **personally serve Thai Han** with a copy of this order, as well as copies of all of the previous orders
4 and subpoenas in this matter, on or before **November 30, 2009**. Proof of such service shall be filed with
5 the Clerk of the Court as soon as practicable.

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7 DATED: November 19, 2009

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10 **CATHY ANN BENCIVENGO**
11 United States Magistrate Judge
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