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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
Plaintiff,

THE AMERICAN REGISTRY OF
RADIOLOGIC TECHNOLOGISTS,
Party of interest,
v.
KEITH MOULTRY,
Defendant.

CASE NO. 3:16-CV-01322-JAH-KSC
3:18-CR-03298-JAH

ORDER:

**1. GRANTING MOTION FOR
ORDER TO SHOW CAUSE [DOC.
NO. 30];**

**2. ORDER OF CRIMINAL
CONTEMPT PROCEEDINGS,
[18 U.S.C. §401; FED. R. CRIM. P.
42]; AND**

3. NOTICE TO APPEAR

This matter comes before the Court on Plaintiff’s Motion for Order to Show Cause. *Doc. No. 30*. The American Registry of Radiologic Technologists (“Plaintiff” or “ARRT”) seeks an Order directing Defendant Keith Moultry (“Defendant”) to appear and show cause why he should not be held in criminal contempt of court for failure to comply with the Court’s August 14, 2017 and February 28, 2018 orders (doc. nos. 19, 28), pursuant to Rule 42 of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”) and 18 U.S.C. § 401.

1 On August 14, 2017, this Court entered an Order of Default Judgment
2 requiring Defendant to:

- 3 (1) Cease directly or indirectly using, reproducing, copying, or imitating the
4 ARRT® trademarks, service marks, certification marks, or any other mark,
5 word, or name similar to the ARRT® trademark;
- 6 (2) Deliver to ARRT all materials in his possession, custody, or control
7 bearing, containing or using the ARRT® trademark, service marks, or
8 certification marks, pursuant to 15 U.S.C. § 1118;
- 9 (3) Pay costs in the amount of \$4,500.03 and attorneys' fees in the amount of
10 \$20,721.00 pursuant to 15 U.S.C. § 1117(a), and
- 11 (4) File with the Court and serve on ARRT within thirty (30) days after the
12 service on Defendant, a written report, made under oath, setting forth
13 in detail the manner and form in which he has complied.

14 On November 30, 2017, Plaintiff filed its first Motion for Order to Show
15 Cause, requesting the Court hold Defendant in contempt for failure to comply with
16 the Court's order and continued unlawful use of the ARRT marks. *Doc. No. 23*. The
17 initial contempt motion alleged Defendant:

- 18 1. Failed to pay ARRT costs or fees;
- 19 2. Failed to turn over all forged materials containing ARRT's marks in his
20 possession, control or custody ;
- 21 3. Failed to file with the Court a sworn report indicating his compliance with
22 the August 14th, 2017 Order of Default Judgment;
- 23 4. Submitted forged ARRT registration cards to gain and maintain
24 employment at Parkview Community Hospital under the alias "Kevin
25 Marshall";
- 26 5. Submitted an ARRT credentials verification, a forged ARRT credential
27 card, and listed certification with ARRT as a Certified Technologists in
28 Fluoroscopy under the alias "Kevin Marshall," in an application for
employment with T&T Staffing on or about September 14, 2017.

1 Plaintiff further asserted that Defendant had shown no willingness to comply with
2 the terms of this Court's order.

3 The Court vacated the Order to Show Cause hearing date and ordered
4 Defendant to file a written response. *See Doc. No. 26*. On February 28, 2018, after
5 receiving no response from Defendant, the Court issued an Order of Civil Contempt
6 ("Civil Contempt Order"). *Doc. No. 28*. Finding Defendant in violation of this
7 Court's Order of Default Judgment, the Court granted Plaintiff's motion, held
8 Defendant in civil contempt, and required Defendant to "compensate Plaintiff's
9 reasonable attorneys' fees in the amount of \$7,487.00 incurred in bringing the Motion
10 for Order to Show Cause." This Order also permitted Defendant to purge himself of
11 the Civil Contempt Order by taking steps necessary to comply with the Court's Order
12 of Default Judgment.

13 On May 17, 2018, Plaintiff filed the instant motion for an order to show cause
14 why defendant should not be held in criminal contempt pursuant to *Fed. R. Crim. P.*
15 42(a)(2) for failing to comply with the Court's August 14, 2017 and February 28,
16 2018 orders. *Doc. No. 30*. Plaintiff maintains that Defendant has not compensated
17 ARRT or otherwise purged himself of the Court's Civil Contempt Order. The motion
18 further alleges Defendant has made no attempt to contact Plaintiff's counsel nor
19 indicated a willingness to deliver any ARRT certification marks in his possession or
20 control. Moreover, Plaintiff filed a supplemental brief alleging Defendant's
21 continued unauthorized use of the ARRT trademark. *See Doc. No. 31*. The conduct
22 alleged includes the use of (1) fraudulent ARRT credential cards under additional
23 aliases "Kenneth E. Martin" and "Kenneth L. Jordan" (2) a forged ARRT certificate
24 containing an invalid certification classification and unassigned ARRT identification
25 number, and (3) a counterfeit social security card and driver's license under the alias
26 "Kenneth Martin." *See Doc. No. 31*.

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1 Under 18 U.S.C. §401, this Court has the “power to punish by fine or
2 imprisonment, or both, at its discretion, such contempt of its authority . . . as . . . (3)
3 disobedience or resistance to its lawful writ, process, order, rule, decree, or
4 command.” 18 U.S.C. §401; *United States v. Powers*, 629 F.2d 619, 624 (9th Cir.
5 1980). Pursuant Rule 42(a)(1), such proceedings need not be initiated by indictment
6 or information. *Fed. R. Crim. P.* 42(a)(2). The Court need only give notice of the
7 time and place of the trial and allow defendant a reasonable time to prepare a defense.
8 *Id.* at 625; *Fed. R. Crim. P.* 42(a)(1).

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. ARRT’s motion for an order to show cause why Defendant, Keith Moultry,
11 should not be held in criminal contempt [Doc. No. 30] is **GRANTED**.

12 2. Pursuant to Rule 42(a)(1)(C), Defendant is notified upon receipt of this Order
13 that criminal contempt proceedings are hereby initiated for failure to comply with the
14 Court’s August 14, 2017 and February 28, 2018 orders, including the directives as
15 set forth above.

16 3. Pursuant to Rule 42(3), the Clerk of Court for the Southern District of
17 California shall designate this case for contempt proceedings, including the
18 appointment of counsel if Defendant is determined to be financially eligible, and trial
19 or hearing as follows: 18CR03298-JAH.

20 **IT IS FURTHER ORDERED** that:

21 4. The Clerk shall issue a Summons in a Criminal Case to set bail and a trial
22 date. A first appearance in the above-entitled action has been placed on the calendar
23 of the Honorable John A. Houston on September 21, 2018 at 11:30 a.m., in courtroom
24 13B at: **U.S. District Courthouse, Annex, 333 West Broadway, San Diego, CA.**

25 5. The Clerk is **DIRECTED** to deliver the Summons, a certified copy of this
26 Order, and a certified copy of the Default Judgment and Civil Contempt orders [Doc.
27 Nos. 19 and 28] to the United States Marshal.

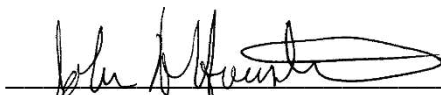
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6. Upon receipt, the U.S. Marshal is **ORDERED** to serve the certified copies of this Court's orders and summons upon the named Defendant as directed by the Court. All costs of service will be advanced by the United States.

7. Pursuant to Rule 42(a)(2), the Court **APPOINTS** the United States Attorneys Office of the Southern District of California, Criminal Division and the designated Assistant United States Attorney to prosecute the contempt.

DATED: August 13, 2018



HON. JOHN A. HOUSTON
DISTRICT STATES DISTRICT JUDGE