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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**OFFICE DEPOT, INC.**, a Delaware corporation,

Plaintiff,

vs.

**JOHN ZUCCARINI**, individually and d.b.a. COUNTRY WALK; and DOES 1 through 10, inclusive,

Defendant.

Case No. C-06-80356-SI

**JUDGMENT CREDITOR DS HOLDINGS, LLC'S APPLICATION FOR FINDING OF CONTEMPT AGAINST JUDGMENT DEBTOR JOHN ZUCCARINI**

DATE: September 10, 2010  
TIME: 9:00 a.m.  
CTRM: 10, 19th Floor

**DS HOLDINGS, LLC**, a Colorado limited liability company,

Judgment Creditor,

vs.

**JOHN ZUCCARINI**, individually and d.b.a. COUNTRY WALK; and DOES 1 through 10, inclusive,

Judgment Debtor.

The Honorable Susan Illston

## INTRODUCTION

1  
2 Nearly two years ago, the Court appointed Michael Blackburg as the post-  
3 judgment receiver in this action (the "Receiver"). The Court tasked the Receiver with  
4 marshaling Judgment Debtor John Zuccarini's domain holdings (the "Domain Holdings")  
5 and selling the Domain Holdings at auction to satisfy Zuccarini's obligations. Since that  
6 time, the Court, the Receiver, and all the parties have understood that the Receiver  
7 would research the most effective way to sell the Domain Holdings and propose the  
8 same for the Court's approval. Thus, the Court recently said that the Receiver and  
9 parties were free to submit to the Court a procedure for this auction.

10 Judgment Creditor DS Holdings, LLC ("DS Holdings"), Creditor and Intervenor  
11 the United States of America ("U.S."), and the Receiver have all worked with each other  
12 to select an appropriate auction for the Domain Holdings. Zuccarini did just the  
13 opposite. Not only did Zuccarini refuse to work with the Receiver or the parties, he has  
14 sought to obstruct the auction process. Specifically, Zuccarini contacted the selected  
15 auction house and hosting conference and threatened them with litigation if they  
16 participated in the auction of the Domain Holdings. With these tactics, Zuccarini has  
17 achieved his goal: he has threatened to derail the auction process, despite the Court's  
18 orders stating that the Domain Holdings are to be auctioned. The Court should find  
19 Zuccarini in contempt of Court for his violations of the Court's orders.

## BACKGROUND

20  
21 Since the Court appointed the Receiver in September 2007 the parties and the  
22 Court have envisioned the Receiver selling the Domain Holdings at auction to satisfy  
23 Zuccarini's obligations. Thus, on June 15, 2010 the Court issued an order denying  
24 Zuccarini's motion for emergency relief and Network Solutions, LLC's motion to  
25 intervene. [D.E. No. 119.] In this order, the Court said, "[t]he receiver and the parties  
26 are free to agree on a procedure for auction of the approximately 116 domain names  
27 that remain in the receiver's control, subject to the Court's approval."  
28

1 Following the entry of this order, the Receiver contacted auction houses to  
2 discuss the possibility of selling the Domain Holdings. The Receiver selected the  
3 auction occurring at the T.R.A.F.F.I.C. Domain Conference & Expo, in Miami, Florida,  
4 on October 19, 2010, to be held in conjunction with Latona's Brokerage & Auction  
5 House (the "Auction") as the most effective way to maximize the proceeds from the  
6 Domain Name Holdings. And on July 30, 2010 DS Holdings, the U.S., and the Receiver  
7 submitted a motion asking the Court to approve the sale of the Domain Holdings at the  
8 Auction (the "Auction Motion").

9 Zuccarini opposed the Auction Motion. Additionally, Zuccarini contacted the  
10 proprietors of both the T.R.A.F.F.I.C. Domain Conference & Expo and Latona's  
11 Brokerage & Auction House and threatened them with legal action if they worked with  
12 the Receiver. Specifically Zuccarini wrote:

13 I am writing this letter to the stated parties, as I believe the parties may  
14 not be fully aware of all the circumstances concerning the related  
15 domain names and the current Federal litigation involving these domain  
16 names.

17 It has come to my attention, that although there are two separate on-  
18 going legal disputes in the Federal Court system concerning my  
19 ownership of Domain Names, that Rick Latona through Latona's LLC, in  
20 consent and cooperation with Targeted Traffic Inc., represented by  
21 Howard Neu, and in consent and cooperation with Rick Schwartz, and  
22 organizer of T.R.A.F.F.I.C. Domain Conference and Expos, is  
23 considering entering into an agreement to conduct an auction of  
24 particular Domain Names involved in these on-going Federal litigations.

25 These cases currently before the Federal Courts related to the Domain  
26 Names of the proposed auction are, DS Holdings LLC vs. Zuccarini (C-  
27 06-80356-SI) being heard in the Northern District of California and  
28 currently on appeal to the 9<sup>th</sup> Circuit Court of Appeals (10-16383), in  
addition to, Zuccarini vs. Namejet LLC, Network Solutions LLC, VeriSign  
Inc., Enom Inc., (2:10-CV-14178-KMM) being heard in the Southern  
District of Florida.

In addition, there is also currently before the 9<sup>th</sup> Circuit Court of Appeals  
a motion to stay the auction of all the Domain Names till the Court issues  
a ruling on the appeal (10-16383), before them.

The suit filed against NameJet, NSI, VeriSign and Enom as defendants,  
is based on the illegal/wrongful conversion of John Zuccarini's Domain  
Names by defendants.

1 Although the crime of conversion, and conspiracy in connection with the  
2 Domain Names, which includes the auctioning of fourteen Domain  
3 Names during the month of May 2010 has been brought up in both  
4 Courts, it appears there are entities still considering to, in my view,  
5 illegally/wrongfully auction the remaining number of Domain Names.

6 For those who would become involved in further attempts to auction any  
7 of these particular Domain Names, it would be necessary for me to bring  
8 those parties, either into one of the on-going actions, or into a separate  
9 lawsuit as defendants, a draft copy of which I have attached.  
10 (Declaration of Karl S. Kronenberger in Support of DS Holdings, LLC's  
11 Application for Contempt Against Zuccarini ("Kronenberger Decl.") ¶2 &  
12 Ex. A.)

13 On August 4, 2010 Zuccarini sent the following email to the same recipients, specifically  
14 addressing the email to Howard Neu, one of the owners of the T.R.A.F.F.I.C. Domain  
15 Conference & Expo, who is also an attorney:

16 I am writing in reference to the proposed auction at the Traffic  
17 Conference in Miami for August 19, 2000, and your representation of me  
18 as my attorney in the original Office Depot case.

19 As you are aware, as you represented me when the Office Depot case  
20 was first filed in April 2000, and while your name is not present on the  
21 Pacer web site, you had made telephone contact with the attorney of  
22 record at that time for Office Depot in hopes of coming to a settlement,  
23 although that did not work out in the end.

24 You did as you may recall, as I checked the Pacer site today, on  
25 December 13, 2000 file an affidavit on my behalf, although it was  
26 rejected by the Court, as you had forgotten to use lined numbered  
27 paper for the document. No doubt though that document is on file with  
28 the court.

In consideration of these circumstances, I believe it to be extremely  
unethical, for you to conduct and if not illegal, also completely unethical,  
for you to financially benefit from any auction of the domain names for  
the Office Depot case. (Kronenberger Decl. ¶4 & Ex. B.)

Zuccarini's emails have had the intended results. The recipients have expressed  
apprehension to DS Holdings about holding the auction of the Domain Holdings, and  
expressed fear that if they go through with the Auction they will be haled into court by  
Zuccarini and incur considerable expense. (Kronenberger Decl. ¶5.)

## ARGUMENT

### A. Zuccarini has committed contempt of Court.

Civil contempt is characterized by the court's desire to compel obedience to a  
court order or to compensate the contemnor's adversary for injuries that resulted from

1 non-compliance. *Biovail Labs., Inc. v. Anchen Pharm., Inc.*, 463 F. Supp. 2d 1073,  
2 1080 (C.D. Cal. 2006); see *Bingman v. Ward*, 100 F.3d 653, 655 (9th Cir. 1996). A  
3 party seeking a contempt sanction must establish: 1) that an opposing party has  
4 violated a federal district court's order; 2) beyond substantial compliance; 3) not based  
5 on good faith and reasonable interpretation of the order; 4) by clear and convincing  
6 evidence. *Labor/Cmty. Strategy Ctr. v. Los Angeles County Metro. Transp. Author.*, 564  
7 F.3d 1115, 1123 (9th Cir. 2009). In a civil contempt proceeding, the Court is not  
8 required to find that the contemnor willfully or intentionally failed to comply with the  
9 Court's order, and good faith is not defense. *United States v. Rose*, 437 F. Supp. 2d  
10 1166, 1170 (S.D. Cal. 2006).

11 A person who unlawfully interferes with the Court's officers and agents in full and  
12 complete possession and management of property in the Court's possession is guilty of  
13 contempt. See *In re Rubin*, 242 F. Supp. 408, 412 (E.D. Pa. 1965). Thus, an attempt  
14 to disturb the custody or possession of property in the possession of a Court-appointed  
15 receiver without leave of the Court is a contempt of Court. See *In re Cochran*, 40 F.2d  
16 282, 285 (W.D. Wash. 1930).

17 Here, there is also no question that Zuccarini was aware that the Court had  
18 ordered the Receiver to develop and submit to the Court a plan by which the Domain  
19 Holdings would be sold at auction. This duty of the Receiver has appeared in multiple  
20 orders of the Court. Moreover, there is no question that Zuccarini has sought to  
21 interfere with the Receiver's auctioning of the Domain Holdings. Zuccarini expressly  
22 threatened to sue both the auctioneer and the conference hosting the auction if they  
23 participated in the sale of the Domain Holdings.

24 In light of these two simple facts, it is unfortunately indisputable that Zuccarini  
25 has taken affirmative efforts to flout the Court's orders and thwart the Court's  
26 administration of justice. If the Court does not impose an appropriate remedial sanction,  
27 Zuccarini will prevent the sale of the Domain Holdings.

28 //

1 **B. The Court should impose appropriate coercive sanctions against Zuccarini.**

2 Unless the Court imposes appropriate remedial and prophylactic sanctions  
3 against Zuccarini, he will continue to threaten the auction process and disregard the  
4 Court's orders.

5 Civil contempt is characterized by the Court's desire to compel obedience with its  
6 orders. See *United States v. Bright*, 596 F.3d 683, 695-96 (9th Cir. 2010). Civil  
7 contempt sanctions must either compensate the complaining party for its losses  
8 resulting from the contemnor's misconduct or serve to coerce an individual into future  
9 compliance with the Court's order. See *Whittaker Corp. v. Execuair Corp.*, 953 F.2d  
10 510, 517 (9th Cir. 1992). A litigant is not entitled to continue to obstruct and delay the  
11 business of the Court after fair and clear warning of his contempt. See *Dallas Cabana,*  
12 *Inc. v. Collier*, 469 F.2d 606, 610 (5th Cir. 1972). Thus, Courts have the power to  
13 impose a conditional period of imprisonment for the purpose of coercing an individual to  
14 obey its validly entered order. See *United States v. Rose*, 437 F. Supp. 2d 1166, 1170  
15 (S.D. Cal. 2006). While the Court generally must impose the minimum sanction  
16 necessary to secure compliance with its orders, the Court retains discretion to fashion  
17 an appropriate remedial or coercive sanction. See *Bright*, 596 F.3d at 696.

18 The Court must impose an appropriate coercive sanction against Zuccarini to  
19 prevent him from further disrupting the Auction. Given Zuccarini's continual misconduct,  
20 DS Holdings believes that nothing short of the threat of incarceration will stop Zuccarini  
21 from his efforts to derail the Auction. Moreover, in order to ensure that Zuccarini does  
22 not threaten the proprietors of the Auction with baseless and expensive litigation, the  
23 Court should exercise exclusive jurisdiction over any dispute that may arise out of or  
24 relate to the Auction. These are appropriate coercive sanctions to address Zuccarini's  
25 contempt.

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**CONCLUSION**

For all the reasons set forth above, the Court should hold Zuccarini in contempt of the Court.

DATED: August 4, 2010

KRONENBERGER BURGOYNE, LLP

By:           s/ Henry M. Burgoyne, III          

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