

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

XEROX CORPORATION, a New York  
corporation,

Plaintiff,

v.

ATLANTA MARKETING SOLUTIONS,  
INC., a Georgia corporation,  
PAULETTE E. RAKESTRAW and  
JEFFREY S. BRADDOCK,

Defendants.

CIVIL ACTION FILE

NO. 1:10-CV-0130-CC

**PLAINTIFF'S MOTION FOR CONTEMPT OF COURT**

Plaintiff Xerox Corporation ("Plaintiff" or "Xerox") files this Motion For Contempt of Court against Defendants Atlanta Marketing Solutions, Inc. ("Atlanta Marketing"), Paulette E. Rakestraw ("Rakestraw") Jeffrey S. Braddock ("Braddock") (collectively "Defendants").

As more fully set forth in the accompanying Brief in support of this Motion, Defendants have intentionally and without justification refused to comply with an unambiguous and valid Order of this Court directing the payment of certain attorneys' fees as sanctions. (Docket No. 53).


WHEREFORE, Plaintiff requests an Order finding Defendants in civil contempt of this Court, by way of imprisonment and

finer, until Defendants comply with the previous Court Order and the award of attorneys' fees for bringing this Motion.

This 16th day of September, 2011.

Respectfully submitted,

KUTAK ROCK LLP

By   
Gregory R. Crochet  
Georgia Bar No. 196650  
Elizabeth L. Fite  
Georgia Bar No. 142347  
Suite 2100  
Peachtree Center South Tower  
225 Peachtree Street, N.E.  
Atlanta, GA 30303-1731  
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Attorneys for Plaintiff Xerox  
Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the within and foregoing **MOTION FOR CONTEMPT OF COURT** was served upon all parties and their counsel of record by electronic filing and by placing a copy of same in the United States Mail in an envelope with adequate postage affixed thereon, properly addressed as follows:

Robert A. Chambers, Esq.  
Law Office of Robert A. Chambers  
8440 Courthouse Square, East  
Suite A  
Douglasville, GA 30134

This the 16<sup>TH</sup> day of September, 2011.

  
\_\_\_\_\_  
Gregory R. Crochet

IN THE UNITED STATES DISTRICT COURT  
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BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR CONTEMPT OF COURT

I. PROCEDURAL HISTORY

Plaintiff Xerox files this Brief in Support of Plaintiff's Motion for Contempt of Court against Defendants. This is a simple action on an equipment lease, on account, and related guaranty. Atlanta Marketing has admittedly breached its payment obligations under the lease and on account. Rakestraw and Braddock, as Guarantors, have admittedly breached their written guaranty of corporate obligations.

Accordingly, Plaintiff filed its initial Motion for Summary Judgment and to Dismiss Counterclaim on July 19, 2010 (Docket No. 20) (the "Initial MSJ") based primarily on Plaintiff's First Requests for Admission duly served on April 15, 2010 (the "1st RFAs"), which Defendants failed to answer. After Plaintiff

filed its Initial MSJ, Defendants sought to withdraw their admissions to Plaintiff's 1st RFAs. This Court initially struck Defendants' Motion to Withdraw Admissions by way of Order dated November 10, 2010 (Docket No. 40). After Defendants properly filed a Motion for Permission to File Motion to Withdraw Admissions (Docket No. 41), the Court entered an Order on March 28, 2011 (Docket No. 43) (the "March 28 Order"), essentially giving Defendants a second chance.

In the March 28 Order, this Court vacated its earlier order, and granted Defendants' Motion for Permission to File a Motion to Withdraw Admissions as well as Defendants' Motion to Withdraw Admissions. This Court also denied, without prejudice to renew, Plaintiff's Initial MSJ.<sup>1</sup> This Court reopened the discovery period for 90 days and ordered Defendants to respond to all outstanding discovery requests within 10 days, which Defendants did albeit with deficient responses.

Finally, in the March 28 Order the Court also granted Plaintiff's requests for attorneys' fees and directed Plaintiff to file a document within 10 days to support the amount requested. Plaintiff's counsel filed an Affidavit on April 25,

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<sup>1</sup> On August 8, 2011 Plaintiff filed its Renewed Motion for Summary Judgment and to Dismiss Counterclaim (Docket No. 54). Defendants have not timely responded, and that Motion is pending.

2011, requesting \$17,929.60 in attorneys' fees incurred in connection with the Initial MSJ.

Accordingly, by way of Order dated July 26, 2011 (Docket No. 53) (the "July 26 Order"), the Court awarded \$17,929.60 in fees to Plaintiff.<sup>2</sup> This Court was very specific on the payment of Plaintiff's fees as follows:

As previously set forth by the Court, Defendants' former counsel, David Pardue, is responsible for payment of half of the fees awarded, \$8,964.80, and Defendants shall be responsible for the remaining, equal amount. These amounts are to be remitted to Plaintiff's counsel **within the next thirty (30) days**. Failure to pay these amounts to Plaintiff's counsel **will result in additional sanctions** (emphasis in original).

(July 26 Order, p. 2). Half of the fees awarded were timely paid by or on behalf of Mr. Pardue, Defendants' initial counsel. However, not surprisingly, Defendants have failed to pay any amount as ordered in the July 26 Order.

Thereafter, counsel for Plaintiff attempted to confer with Defendants' current counsel of record, Robert A. Chambers, Esq., to resolve the outstanding attorneys' fee issue. On September 1, 2011, counsel for Plaintiff called and wrote Defendants' counsel advising there had been no payment or

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<sup>2</sup> As noted on the Court's docket, the July 26 Order was served via first class mail and certified mail, return receipt requested on Defendants' former counsel David L. Pardue, Esq., and served by other means on Defendants' current counsel Robert Chambers, Esq.

response to the July 26 Order in a good faith effort to resolve the matter.<sup>3</sup> Further, on September 9, 2011, counsel for Plaintiff again called Defendants' counsel. However, to date neither Defendants nor their counsel of record have responded in any fashion.

After attempts to resolve this matter, and despite payment from the Defendants' former counsel, there has been no payment of attorneys' fees from Defendants, and the July 26 Order remains unsatisfied. Given Defendants' intentional, unjustified refusal to comply with the July 26 Order, Plaintiff was forced to file this Motion for Contempt.

## II. ARGUMENT AND CITATION OF AUTHORITY

Defendants have ignored not only the original lawsuit, legitimate discovery, but the July 26 Order of this Court ordering the payment of half of \$17,929.60 in Plaintiff's attorneys' fees. Clearly, Defendants are in contempt of this Court and additional sanctions are warranted.

A contempt of court is the "disregard of judicial authority," and the court's ability to impose contempt is "an inherent and integral element of its power and has deep historical roots." 11A Charles Allen Wright, Arthur R. Miller,

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<sup>3</sup> A true and correct copy of counsel for Plaintiff's letter dated September 1, 2011 to Defendants' current counsel of record is attached hereto as Exhibit "A."

Mary Kay Kane, *Federal Practice and Procedure*, § 2960 (2d ed. 1995). Contempt in which the ultimate object of the punishment is the enforcement of the litigant's rights and remedies is deemed civil contempt. A federal court's discretion to sanction contempt includes, but is not limited to, imposing a fine or imprisonment to coerce the contemnor into complying with the orders and awarding attorneys' fees. *Id.*; see *Taylor v. Teledyne Technologies, Inc.*, 338 F. Supp. 2d 1323, 1346 (N.D. Ga. 2004) (citing *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 827, 114 S. Ct. 2552, 129 L. Ed. 22 642 (1994)); *Sizzler Family Steak Houses v. Western Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1534-35 (11th Cir. 1986) (attorneys' fees could be imposed even if alleged contemnor was in compliance by the time of the show cause hearing).

"Civil contempt proceedings are brought to enforce an order that requires the defendant to act in some defined manner." *Taylor*, 338 F. Supp. 2d at 1345 (citing *Mercer v. Mitchell*, 908 F.2d 763, 768 (11th Cir. 1990)). If the alleged conduct would violate the prior order, the Court is required to enter a show cause order. *Id.* During the hearing for the show cause order, the alleged contemnor must demonstrate that he either did not violate the prior order or that he was excused from complying. *Id.* To prevail in a contempt action, "the moving party must



prove by clear and convincing evidence that (1) a valid court order was in effect; (2) the order was clear and unambiguous; and (3) the alleged violator could have complied with the court's order, had he chosen to do so." *Id.* at 1345-46.

This case warrants a finding of civil contempt. First, there is no dispute that the July 26 Order was a valid order of this Court. The July 26 Order was neither appealed nor challenged by any of the Defendants, and, in fact, Defendants' former counsel timely paid half of the fees award. Second, the July 26 Order was clear and unambiguous, pursuant to which the Defendants were to pay to Plaintiff's counsel \$8,964.80 within thirty (30) days of the entry of the July 26 Order. Third, Defendants neither objected to nor made a showing that they were unable to pay the fees award. Indeed, they have retained, and are presumably paying, new counsel. Thus, Defendants are clearly in contempt.

As Defendants have repeatedly shown complete disregard for the legal process, including in discovery and the nonpayment of a portion of Plaintiff's attorneys' fees incurred, an appropriate method to coerce future compliance with the July 26 Order would be incarceration until such time as they purge themselves of their contempt. Further, Plaintiff also requests the Court award attorneys' fees and expenses for having to bring

this Motion For Contempt.<sup>4</sup> Such an award of reasonable expenses, including attorneys' fees, is an appropriate sanction in a civil contempt action for the movant's attempts to enforce strict compliance with the July 26 Order. *Sizzler Family Steak Houses*, 793 F.2d at 1534-35. The Court may consider other appropriate sanctions as well.

### III. CONCLUSION

Plaintiff respectfully requests that this Court grant its Motion finding Defendants in civil contempt and ordering their incarceration until such time as they purge their contempt and the award of attorneys' fees for bringing this Motion.

*[The remainder of this page intentionally left blank.]*


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<sup>4</sup> Upon this Court's determination that an award of attorneys' fees and expenses is appropriate, Plaintiff will submit an affidavit detailing the amount of Plaintiff's request.

This 16th day of September, 2011.

Respectfully submitted,

KUTAK ROCK LLP

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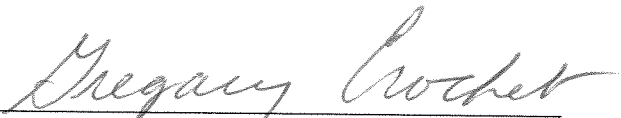
CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1D, NDGa., I certify that to the best of my knowledge the Plaintiff's Motion for Contempt of Court and Supporting Brief filed on September 16, 2011, complies with the type and format (including type and point size) selections as set forth in LR 5.1B, NDGa. The font used to prepare said document is 12 Point Courier New and there are no more than ten (10) characters per inch.

Respectfully submitted this 16th day of September, 2011.

Respectfully submitted,

KUTAK ROCK LLP

By 

Gregory R. Crochet  
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September 1, 2011

**VIA E-MAIL [rachamberslaw@aol.com](mailto:rachamberslaw@aol.com)  
AND FIRST CLASS MAIL**

Robert A. Chambers, Esq.  
8440 Courthouse Square East  
Douglasville, GA 30134

Re: *Xerox Corporation v. Atlanta Marketing Solutions, Inc., Paulette E. Rakestraw  
and Jeffrey S. Braddock*; U.S. District Court for the Northern District of Georgia,  
Atlanta Division; Civil Action File No. 1:10-CV-0130-CC

Dear Mr. Chambers:

As a follow up to my call today, this is to confirm that, pursuant to the Court's Order dated July 26, 2011 (Docket No. 53), we have not yet received Defendants' half of awarded fees in the amount of \$8,964.80. Please advise as to the status of payment before we are forced to seek additional Court intervention. Thank you.

Sincerely,



Gregory R. Crochet

**EXHIBIT A**  
**OF 1**