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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

AMRON INTERNATIONAL DIVING  
SUPPLY, INC., a California corporation,  
  
Plaintiff,

vs.

HYDROLINX DIVING  
COMMUNICATION, INC., a California  
corporation; SAAD SADIK, a.k.a. TODD  
SADIK, a.k.a. JOHN SADIK, a.k.a.  
DALEA ESTEPHAN, a.k.a. STEVEN  
MORALES, a.k.a. STEPHAN  
MORALES, a.k.a. FRANK JASHUA, an  
individual,  
  
Defendants.

CASE NO. 11-CV-1890-H (JMA)

**ORDER:**

**(1) AWARDING SANCTIONS  
AGAINST DEFENDANTS [Doc.  
No. 47];**

**(2) DENYING DEFENDANT  
HYDROLINX’S MOTION TO  
EXTEND DISCOVERY  
DEADLINES OR STAY  
DISCOVERY [Doc. No. 62];**

**(3) GRANTING PLAINTIFF’S  
MOTION FOR CONTEMPT  
[Doc. No. 64];**

**(4) GRANTING COUNSEL’S  
RENEWED MOTION TO  
WITHDRAW AS COUNSEL TO  
DEFENDANT HYDROLINX  
[Doc. No. 49]; AND**

**(5) DENYING DEFENDANT  
SADIK’S MOTION TO  
REPRESENT DEFENDANT  
HYDROLINX [Doc. Nos. 68 &  
70]**

On December 13, 2011, this Court granted Plaintiff Amron International Diving Supply, Inc. (“Amron” or “Plaintiff”)’s motion for monetary sanctions for violation of the Court’s

1 order to preserve evidence and referred the case to the Magistrate Judge for a report and  
2 recommendation on the appropriate amount of monetary sanctions. (Doc. No. 36.) On January  
3 9, 2012, the Magistrate Judge issued a report and recommendation for \$73,100.15 in sanctions.  
4 (Doc. No. 47.) On January 23, 2012, Defendant Hydrolinx Diving Communication, Inc.  
5 (“Hydrolinx”) filed an objection to the report and recommendation. (Doc. No. 56.) On  
6 January 20, 2012, Defendant Saad Sadik (“Sadik”) filed an objection to the report and  
7 recommendation. (Doc. No. 59.) On January 27, 2012, Amron filed a reply. (Doc. No. 61.)

8 On January 18, 2012, counsel for Defendant Hydrolinx filed a renewed motion to  
9 withdraw as counsel to Defendant Hydrolinx. (Doc. No. 49.) On February 3, 2012, and  
10 February 8, 2012, Defendant Sadik filed a response and motion to represent Defendant  
11 Hydrolinx. (Doc. Nos. 68 & 70.) On February 7, 2012, Plaintiff filed a non-opposition to  
12 counsel’s motion to withdraw. (Doc. No. 69.)

13 On February 1, 2012, Defendant Hydrolinx filed a motion for reconsideration of the  
14 Court’s order denying Defendant Hydrolinx’s motion for an extension of time regarding  
15 discovery. (Doc. No. 62.) On February 13, 2012, Amron filed a response in opposition to  
16 Hydrolinx’s motion for an extension of time. (Doc. No. 73.)

17 On February 2, 2012, Plaintiff filed a renewed motion for contempt. (Doc. No. 64.)  
18 On February 13, 2012, Defendant Sadik filed a response in opposition. (Doc. No. 72.) On  
19 February 17, 2012, Plaintiff filed a reply. (Doc. No. 74.)

20 The Court held a hearing on these matters on February 21, 2012. Boris Zelkind and  
21 Adam Powell appeared for Plaintiff, and Daniel DiRe appeared for Defendant Hydrolinx.  
22 Defendant Sadik appeared *pro se*.

### 23 **I. Motion for Sanctions**

24 On December 13, 2011, the Court granted Plaintiff’s motion for sanctions based on  
25 evidence that Defendants violated Court orders and destroyed evidence. (Doc. No. 36.) On  
26 January 9, 2012, the Magistrate Judge issued a report and recommendation for monetary  
27 sanctions against Defendant Sadik and Defendant Hydrolinx (collectively “Defendants”) for  
28 \$73,100.15. (Doc. No. 47.)

1 Plaintiff initiated this action by providing evidence that Defendants stole trade secrets,  
2 destroyed electronic data, and attempted to cover their tracks. (Doc. No. 1.) In light of this  
3 evidence, Plaintiff sought an *ex parte* temporary restraining order. (Doc. No. 5.) On August  
4 23, 2011, this Court ordered, “effective immediately, the parties to preserve evidence.” (Doc.  
5 No. 6 at 2.) The order also set a hearing on Amron’s application for a temporary restraining  
6 order for August 31, 2011. (Id.) Amron served the order on Defendants on August 24, 2011  
7 at 3:41 p.m. (Doc. No. 7.)

8 On August 27, 2011, three days after being served with the order, Defendants installed  
9 a Digital Document Shredder (“DDS”) on one of Defendants’ computers (“Sadik Work”).  
10 (Doc. No. 25, Ex. 4, Kopelev Decl. at 8.) DDS is a commercially available software program  
11 that permanently destroys data. (Id.) Defendants used DDS on August 27, 2011 to  
12 permanently delete evidence from Sadik Work. (Id.) The next day, on August 28, 2011,  
13 Defendants installed DDS on another of Defendants’ computers (“Sadik Kids”). (Id.)  
14 Defendants used DDS on August 28, 2011 to permanently delete evidence from Sadik Kids.  
15 (Id.)

16 At the hearing on August 31, 2011, the Court granted Plaintiff’s temporary restraining  
17 order. (Doc. No. 10.) The Court ordered the parties to continue to refrain from destroying any  
18 evidence and ordered Defendants to identify and produce all computers and computer media  
19 in their possession for Amron’s forensic inspection and copying by no later than September  
20 7, 2011. (Doc. No. 14.) The Court further ordered Defendants to provide a written  
21 declaration, under penalty of perjury, attesting that Defendants: (1) accurately identified all  
22 computers and computer media in their possession; (2) produced all such computers and  
23 media; and (3) had not deleted any data since being served with the Court’s August 23, 2011  
24 order. (Doc. No. 14.)

25 On September 6, 2011, Defendants produced three computers in total, including Sadik  
26 Work and Sadik Kids, from which Defendants had already permanently destroyed data using  
27 DDS. (Doc. No. 25, Ex. 4, Kopelev Decl. at 8.) Defendants also produced Sadik’s home  
28 office computer (“Sadik Home”), one USB thumb drive, two CD-ROM’s, and one camera.

1 The forensic evidence established that Sadik Home, the one computer on which Defendants  
2 had not installed shredding software, had a brand new hard drive, which Defendants installed  
3 sometime after August 25, 2011. Defendants manipulated the computer's system clock to  
4 make it appear as though the hard drive had been installed on July 30, 2011. (Doc. No. 25, Ex.  
5 4, Kopelev Decl. at 8.) Amron subpoenaed Western Digital, the manufacturer of the  
6 replacement hard drive, and discovered that the hard drive had not shipped to the retailer until  
7 August 25, 2011. (Doc. No. 25, Ex. 6, Gough Decl. at 1.) Accordingly, Defendants' attempt  
8 to mislead the Court through the system clock manipulation failed because Defendants  
9 installed the new hard drive after the Court's August 23, 2011 Order—the Order that required  
10 Defendants to preserve evidence. (Doc. No. 6.)

11 The Ninth Circuit recognizes two sources of legal authority under which a district court  
12 can sanction a party for abusive litigation practices, including spoliation: “the inherent power  
13 of federal courts to levy sanctions in response to abusive litigation practices, and the  
14 availability of sanctions under Rule 37 against a party who ‘fails to obey an order to provide  
15 or permit discovery.’” Leon v. IDX Sys. Corp., 464 F.3d 951, 958 (9th Cir. 2006) (upholding  
16 the district court's imposition of sanctions, including dismissal of the party's claims and a  
17 \$65,000 monetary fine when party wiped relevant data on one laptop computer during  
18 litigation). The Court “may also award sanctions in the form of attorneys' fees against a party  
19 or counsel who acts ‘in bad faith, vexatiously, wantonly, or for oppressive reasons.’” Leon,  
20 464 F.3d at 961 (citing Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 664, 648 (9th Cir.  
21 1997)). Before such an award is proper, “the court must make an express finding that the  
22 sanctioned party's behavior ‘constituted or was tantamount to bad faith.’” Id. (internal citation  
23 omitted). The amount of the monetary sanctions must also be “reasonable.” Id.

24 In Leon, the Court's finding that a party acted in bad faith by intentionally deleting files  
25 and wiping a computer's hard drive was sufficient to warrant an award of monetary sanctions  
26 for costs related to the spoliation issue. Id. (affirming a \$65,000 monetary spoliation sanction  
27 in addition to terminating sanctions). Here, Defendant Sadik stole more than 110,000 files  
28 from Amron and also began destroying Amron's only copy of tens of thousands of these files.

1 Defendants used a DDS to wipe software on a computer, destroyed or hid another hard drive,  
2 and manipulated the computer system clock to make it appear that the new hard drive was  
3 installed before Defendants were served with the Court’s August 23, 2011 order that required  
4 Defendants to preserve evidence. (Doc. Nos. 6; 25, Ex. 4, Kopelev Decl. at 6-8.) Defendants’  
5 spoliation is more extensive than the party’s actions in Leon. For example, Defendants  
6 concealed the existence of at least one other computer, a 500 GB portable hard drive that was  
7 previously connected to Amron’s computers, and as many as 9 other USB storage devices. (Id.  
8 at 6-7.) Further, Amron may show that some USB devices were plugged into Amron  
9 computers and that the USB devices were later plugged into Sadik Work and Sadik Kids. (Id.  
10 at 6-8.) Defendants, however, installed DDS on both of these computers to permanently delete  
11 evidence from the Sadik computers. (Id. at 8.)

12 When opposing the temporary restraining order, Defendant Sadik declared, under  
13 penalty of perjury, “I understand [the August 23 Order] and will comply with that order” and  
14 “I have not destroyed any Amron files, other than deleting old versions of files during my  
15 normal work for Amron.” (Doc. No. 9-1, Sadik Decl. at ¶¶ 6, 16.) In Defendants’ response  
16 to Plaintiff’s motion for contempt, Defendants confirmed Plaintiff’s forensics findings—that  
17 Defendants destroyed computer data and destroyed or concealed computers and computer  
18 media subsequent to being served with the Court’s order to preserve evidence. (Doc. No. 28-1,  
19 Sadik Decl.) Specifically, Defendants admit to using digital wiping software to destroy  
20 evidence on two computers (“Sadik Work” and “Sadik Kids”) after being served with this  
21 Court’s order to preserve evidence. (Id.) Defendant Sadik stated, in his declaration, “I  
22 searched the internet for a digital document shredder (“DDS”). I downloaded the free  
23 evaluation version of (“DDS”) and run it onto my work computer (HYD001), then on the kids  
24 computer (HYD003).” (Id. at ¶ 7.) Additionally, Defendants admit to destroying and  
25 replacing the hard drive of a third computer (“Sadik Home”). (Id. at ¶ 17.) Defendant Sadik  
26 stated, in his declaration, “I examined the computer and discovered that the motherboard was  
27 operational, but that the hard drive was not responding. I removed the hard drive, broke it and  
28 threw it aside . . . I purchased a new hard drive on September 2, 2011.” (Id.) Contrary to

1 Defendant Sadik's initial statement under penalty of perjury, Defendants destroyed computer  
2 data by using wiping software and destroyed and threw away hard drives. Although  
3 Defendants came forward with some excuses, the Court concluded that monetary sanctions are  
4 appropriate for Defendants' willful violation of the Court's August 23, 2011 order to preserve  
5 evidence and the Court's September 7, 2011 temporary restraining order. (Doc. No. 36.)

6 After the Court referred the matter to the Magistrate Judge, the Magistrate Judge issued  
7 a report and recommendation that the amount of litigation expenses incurred as a result of the  
8 misconduct described above is \$73,100.15. (Doc. No. 47.) The report and recommendation  
9 accounted for attorneys' fees associated with the investigation into Defendants' violations,  
10 attorneys' fees in bringing the motion for contempt, and Plaintiff's costs incurred with  
11 retaining a computer forensic consulting firm. (*Id.* at 2-3.) After reviewing the report and  
12 recommendation and the parties' subsequent filings, the Court adopts the recommendation to  
13 sanction Defendants \$73,100.15 for litigation expenses incurred as the result of the misconduct  
14 described in this Court's sanctions order (Doc. No. 36).

## 15 **II. Motion to Withdraw as Counsel**

16 On November 30, 2011, counsel for Defendants filed a motion to withdraw as counsel.  
17 (Doc. No. 29.) On December 12, 2011, the Court held a hearing and denied counsel's motion  
18 to withdraw as counsel pending the Magistrate Judge's issuance of a report and  
19 recommendation regarding Plaintiff's motion for sanctions. (Doc. No. 35.) On January 9,  
20 2012, the Magistrate Judge issued a report and recommendation regarding monetary sanctions.  
21 (Doc. No. 47.) Therefore, on January 10, 2012, the Court granted counsel's motion to  
22 withdraw as counsel to Defendant Sadik. (Doc. No. 48.)

23 Although Defendant Sadik asserts that he and Defendant Hydrolinx cannot afford new  
24 counsel (Doc. No. 52 at 1), according to Plaintiff, public records indicate that Defendant Sadik,  
25 personally or through an investment trust, owns at least eight homes in Texas and Arizona.  
26 (Doc. No. 61 at 6 n.3.) Moreover, Defendant Sadik, a non-lawyer, filed an *ex parte* motion to  
27 substitute counsel and allow Defendant Sadik to represent Defendant Hydrolinx. (Doc. No.  
28 68.) Defendant Sadik's improper *ex parte* communication with the Court further demonstrates

1 Defendant Sadik's inability to represent Defendant Hydrolinx. Nevertheless, Defendant  
2 Hydrolinx is a corporation, and the law requires a corporation to appear through counsel.  
3 Rowland v. Cal. Men's Colony, 506 U.S. 194, 201-03 (1993). Defendant Sadik is not an  
4 appropriate representative of Defendant Hydrolinx, and the Court denies Defendant Sadik's  
5 motion to represent Defendant Hydrolinx.

6 On January 10, 2012, the Court ordered Defendant Hydrolinx to locate substitute  
7 counsel within seven days. (Doc. No. 48.) At present, Defendant Hydrolinx has not retained  
8 substitute counsel. On January 18, 2012, counsel for Defendant Hydrolinx filed a renewed  
9 motion to withdraw as counsel to Defendant Hydrolinx. (Doc. No. 49.) On February 2, 2012,  
10 the Court again ordered Defendant Hydrolinx to retain substitute counsel, no later than  
11 February 21, 2012, or show cause why sanctions should not issue. (Doc. No. 63.) At present,  
12 Defendant Hydrolinx has not retained substitute counsel. Defendant Hydrolinx has violated  
13 two Court orders to retain substitute counsel. (Doc. Nos. 48 & 63.) This Court warned  
14 Defendant Hydrolinx that failure to comply with the Court's order to retain substitute counsel  
15 could subject Defendant Hydrolinx to appropriate sanctions. (Doc. No. 63.) In light of  
16 Hydrolinx's failure to comply with two Court orders, the Court grants counsel's renewed  
17 motion to withdraw as counsel for Defendant Hydrolinx. Without substitute counsel,  
18 Defendant Hydrolinx may not appear in federal court. Rowland, 506 U.S. at 201-03.  
19 Accordingly, the Court again directs Defendant Hydrolinx to locate substitute counsel within  
20 14 days of this order or face appropriate sanctions for failing to defend itself in this action.  
21 Repetitive failure to comply with the Court's orders may result in further sanctions, including  
22 terminating sanctions or default.

### 23 **III. Motion for Contempt**

24 Plaintiff argues that civil contempt is appropriate because Defendants refuse to produce  
25 the 500 GB USB Seagate external portable hard drive, the HDC\_Manager computer, and three  
26 Kingston Data-Traveler 2.0 USB devices in violation of the Court's December 19, 2011 order  
27 to produce these devices. (Doc. No. 64-1 at 5.)

28 The Court ordered these devices be produced. (Doc. No. 39.) The Court's December

1 19, 2011 order stated, “the Defendants are ORDERED to produce the following computers and  
2 devices:

- 3 a. Computer named “HDC\_MANAGER,” volume serial number 00 1D 9B 80,  
4 referred to in paragraph 15 of the Declaration of Saad Sadik in Opposition to  
5 Motion for Contempt (Doc. No. 28-1) (“Sadik Declaration”), including any hard  
6 disk drives or other Computer Media currently or previously installed in  
7 HDC\_MANAGER or connected to HDC\_MANAGER;
- 8 b. Seagate Portable USB Drive, serial number 2GH1MYE6, referred to in  
9 paragraphs 18 and 21 of the Sadik Declaration; and
- 10 c. Three Kingston Data-Traveler 2.0 USB Devices, serial numbers  
11 6&21830ba5,6&ec95b00, and 6&1988c453 referred to in paragraph 23 of the  
12 Sadik Declaration.

13 (Doc. No. 39.) Moreover, the Court ordered “Defendants to identify and produce all  
14 computers and Computer Media used by or for Defendants or in the Defendants’ possession,  
15 custody, or control.” (Id.)

16 The Ninth Circuit recognizes two sources of legal authority under which a district court  
17 can sanction a party for abusive litigation practices: “the inherent power of federal courts to  
18 levy sanctions in response to abusive litigation practices, and the availability of sanctions  
19 under Rule 37 against a party who ‘fails to obey an order to provide or permit discovery’.”  
20 Leon, 464 F.3d at 958. The purpose of sanctioning civil contempt is to coerce compliance with  
21 the court’s order or to compensate the other party by “award[ing] sanctions in the form of  
22 attorneys’ fees against a party or counsel who acts ‘in bad faith, vexatiously, wantonly, or for  
23 oppressive reasons.’” Leon, 464 F.3d at 961 (citing Primus, 115 F.3d at 648)). Moreover, “in  
24 selecting contempt sanctions, a court is obliged to use the ‘least possible power adequate to the  
25 end proposed.’” Spallone v. U.S., 493 U.S. 265, 280 (1990).

26 According to Plaintiff, Defendant Sadik failed to produce these devices and instead,  
27 filed a declaration asserting: (1) the HDC\_Manager was disposed of, after it was destroyed;  
28 (2) the 500 GB USB Seagate Portable Hard Drive belongs to Defendant Sadik’s father; and



1 (3) Defendant Sadik does not recognize the three Kingston Data-Traveler 2.0 USB devices.  
2 (Doc. No. 43, Sadik Decl. at 1-2.)

3 Defendants do not deny the existence of the 500 GB USB Seagate portable external  
4 hard drive, but refuse to produce it because they assert that the device belongs to Defendant  
5 Sadik's father, and, therefore, is not in their possession, custody, or control. (Id.) According  
6 to Plaintiff, this assertion is disproved by computer forensic evidence that proves Defendant  
7 Sadik used the device continuously, including at Amron, where Defendant Sadik connected  
8 the drive to Amron's lab computers up until September 2, 2011, two days after the temporary  
9 restraining order hearing. (Doc. No. 25-4, Kopelev Decl. at ¶¶ 16-18; Doc. No. 28-1, Sadik  
10 Decl. at ¶¶ 17-18.) Plaintiff also contends that according to LinkedIn, Sadik's father is the  
11 Production Manager at Defendant Hydrolinx. (Doc. No. 64, Zelkind Decl., Ex. 5.) Moreover,  
12 Amron attempted to subpoena the 500 GB Seagate hard drive from Sadik's father, but  
13 Defendants' counsel refused to accept service of the subpoena and Defendants refused to  
14 provide information regarding Sadik's father's whereabouts. (Id. at Ex. 4.) Thus, Plaintiff  
15 maintains that it has been unable to serve the subpoena on Sadik's father. (Doc. No. 64-1 at  
16 6.)

17 Defendants assert they destroyed the HDC\_Manager computer before the lawsuit was  
18 filed and do not recognize the three Kingston USB devices. (Doc. No. 43, Sadik Decl. at 1-2.)  
19 Plaintiff contends the computer forensic evidence proves that the computer was connected to  
20 the Hydrolinx office computer ("Sadik Work") on August 25, 2011, the day after Defendants  
21 were served in this case. (Doc. No. 64, Kopelev Decl. at ¶ 19.) Plaintiff also maintains that  
22 the three Kingston USB devices were connected to Sadik Work and Sadik Kids on August 27,  
23 2011; August 28, 2011; and August 30, 2011. (Id.)

24 Additionally, Defendants refuse to produce the "ATS" USB memory device, arguing  
25 that it contains private information. (Doc. No. 43, Sadik Decl. at 1-2.) This storage device  
26 was not specifically identified in the Court's December 19, 2011 order, but Defendant Sadik  
27 referenced the "ATS" USB memory device in his December 28, 2011 declaration in which he  
28 refused to turn over the other computer devices. (Doc. No. 43, Sadik Decl. at ¶ 7.) (Doc. No.

1 39.) Nonetheless, Defendants must produce this device because the Court ordered Defendants  
2 to produce all computers and computer media used by or for Defendants or in the Defendants'  
3 possession, custody, or control. (Id. at ¶ 1.)

4 The Court issued an order to show cause and conducted an evidentiary hearing on  
5 February 21, 2012, regarding Plaintiff's renewed motion for contempt. (Doc. Nos. 63, 67.)  
6 At the hearing, Defendant Sadik admitted under oath that he had not produced the 500 GB  
7 USB Seagate external portable hard drive, the HDC\_Manager computer, or the three Kingston  
8 Data-Traveler 2.0 USB devices. Defendant Sadik admitted under oath that he had attended the  
9 hearing on December 12, 2011, in which the Court addressed the order to produce computers  
10 and devices, and Defendant Sadik admitted he received a copy of the Court's December 19,  
11 2011 order to produce these devices. Moreover, Defendant Sadik admitted under oath that he  
12 had purchased the 500 GB USB Seagate external portable hard drive and stated that he then  
13 gave it to his father. Further, Defendant Sadik admitted under oath that he created the  
14 LinkedIn profile that lists Sadik's father as the Production Manager at Defendant Hydrolinx.  
15 Therefore, the Court concludes that Defendant Sadik and Defendant Hydrolinx are in contempt  
16 of the Court's December 19, 2011 order to produce these devices. The Court grants Plaintiff's  
17 motion for contempt based on Defendants' violation of the Court's December 19, 2011 order  
18 to produce these devices.

#### 19 **IV. Motion for an Extension of Time**

20 Defendant Hydrolinx filed an *ex parte* motion for reconsideration of the Court's  
21 January 20, 2012 order denying Defendant Hydrolinx's motion for an extension of time  
22 regarding discovery requests. (Doc. No. 62.) Specifically, Defendant Hydrolinx requests  
23 additional time to complete initial disclosures and to stay discovery responses to Amron's  
24 request for production as to Defendant Hydrolinx. (Doc. No. 62.) The Court declines to  
25 extend the time or stay discovery.

#### 26 **Conclusion**

27 Based on the foregoing the Court:

28 (1) ADOPTS the report and recommendation and awards \$73,100.15 in sanctions

1 against Defendants;

2 (2) GRANTS counsel's renewed motion to withdraw as counsel to Defendant  
3 Hydrolinx;

4 (3) ORDERS Defendant Hydrolinx to retain substitute counsel within **14 days** of this  
5 order;

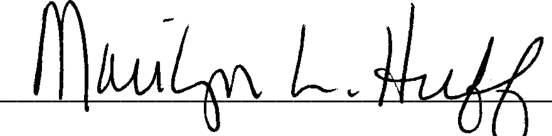
6 (4) DENIES Defendant Sadik's motion to represent Defendant Hydrolinx;

7 (5) DENIES Defendant Hydrolinx's motion to extend discovery deadlines or stay  
8 discovery; and

9 (6) GRANTS Plaintiff's motion for contempt.

10 **IT IS SO ORDERED.**

11 DATED: February 22, 2012

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14 MARILYN L. HUFF, District Judge  
15 UNITED STATES DISTRICT COURT  
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