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11 **UNITED STATES DISTRICT COURT FOR THE**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 ROY MANOJKUMAR SAMATHANAM, )  
15 )  
16 ) PLAINTIFF, )  
17 )  
18 ) V. )  
19 )  
20 ) NANDASENA GOTABAYA )  
21 ) RAJAPAKSA, A.K.A. GOTABAYA )  
22 ) RAJAPAKSA, )  
23 )  
24 ) DEFENDANT. )  
25 )  
26 )  
27 )  
28 )

Case No.: 2:19-cv-02626-JFW-PLA

**PLAINTIFF'S *EX PARTE***  
**APPLICATION FOR AN ORDER**  
**DIRECTING DEFENDANT AND**  
**HIS COUNSEL AND AGENTS TO**  
**REFRAIN FROM *EX PARTE***  
**CONTACT WITH PLAINTIFF AND**  
**FOR SANCTIONS**

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1 **EX PARTE APPLICATION**

2 PLEASE TAKE NOTICE THAT pursuant to Local Rule 7-19, Plaintiff Roy  
3 Samathanam (“Plaintiff”) hereby applies *ex parte* to this Court for an order directing  
4 defendant Nandasena Gotabaya Rajapaksa (“Defendant”) and his counsel and agents  
5 to cease and desist from all *ex parte* contact with Plaintiff concerning this litigation.

6 Defendant’s foreign counsel and agent have contacted Plaintiff outside the  
7 presence of Plaintiff’s counsel—a violation of the no-contact rule of the California  
8 Rules of Professional Conduct. These *ex parte* contacts have sought to dissuade  
9 Plaintiff through pressure tactics and veiled threats of retaliation. They also have  
10 requested Plaintiff’s admissions on merits issues without benefit of counsel.

11 Plaintiff’s self-help efforts, including cease and desist letters to Defendant’s  
12 agents and opposing counsel, have gone ignored for days. In fact, it was only after  
13 Plaintiff’s counsel emailed and telephoned opposing counsel on April 26, 2019—  
14 over 48 hours after he received his cease and desist letter—that opposing counsel  
15 stated he was looking into the matter. Without an order from the Court, there is grave  
16 danger that Defendant’s efforts unduly to influence a witness will continue. Plaintiff  
17 will be irreparably prejudiced if this Application is not heard on an *ex parte* basis.

18 Plaintiff applies to the court for an order directing Defendant and his counsel  
19 and agents to cease and desist from further *ex parte* contacts. Plaintiff further applies  
20 for an estoppel sanction. Since Defendant’s foreign counsel and agents have sought  
21 improperly to influence a witness before filing a responsive pleading to the  
22 complaint, Plaintiff moves for the court to take as established the jurisdictional fact  
23 that Defendant was personally served with process in this District and to estop  
24 defendant from contesting personal jurisdiction. See [\*Ins. Corp. of Ireland v.\*](#)  
25 [\*Compagnie des Bauxites de Guinee\*, 456 U.S. 694, 704 \(1982\)](#).

26 This Application is based on the accompanying Memorandum of Points and  
27 Authorities and the Declaration of Bonny E. Sweeney (“Sweeney Decl.”).

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 “Trying improperly to influence a witness is fraud on the court and on the  
4 opposing party.” *Ty Inc. v. Softbelly's, Inc.*, 517 F.3d 494, 498 (7th Cir. 2008).  
5 Defendant has compounded a case involving serious allegations of torture by  
6 engaging in abusive *ex parte* contacts. For this reason, Plaintiff moves the Court to  
7 exercise its inherent authority to control the Defendant’s litigation misconduct.

8 A Canadian citizen, Plaintiff’s claims arise from his torture while arbitrarily  
9 detained by agents acting under the command and control of the Defendant—  
10 Gotabaya Rajapaksa, a U.S. citizen and former Defense Secretary of Sri Lanka.  
11 Plaintiff brings a statutory claim under the *Torture Victim Protection Act, Pub. L.*  
12 *No. 102-256, 106 Stat. 73 (1992), § 2(a) (codified at 28 U.S.C. § 1350, note)*.

13 Plaintiff filed the complaint on April 5, 2019. ECF No. 1. Counsel for  
14 Defendant filed an appearance on April 25, 2019. ECF No. 17. In compliance with  
15 Local Rules 7-19 and 7-19.1, Plaintiff’s counsel notified and conferred with  
16 Defendant’s counsel, John Ulin, via telephone on April 26, 2019. Sweeney Decl., ¶  
17 13. The contents of that communication were documented in a subsequent email  
18 from Mr. Ulin in which he states, among other things, that he opposes the  
19 application. Mr. Ulin’s address is Arnold and Porter Kaye Scholer LLP, 777  
20 Figueroa Street, 44th Floor, Los Angeles, CA 90017, and can be reached via  
21 telephone at (213) 243-4228 or email at [john.ulín@arnoldporter.com](mailto:john.ulín@arnoldporter.com). ECF No. 17.

22 **II. FACTS**

23 On April 7, 2019, the Defendant was personally served with Plaintiff’s  
24 complaint and summons during a visit to Los Angeles. ECF No. 9. Since then,  
25 Defendant has launched a coordinated legal and public relations effort involving  
26 lawyers in three countries (Sri Lanka, Canada, and the United States) and various  
27 spokespersons (collectively “Defendant’s counsel and agents”). Based on statements  
28

1 made to Plaintiff and to the media, this team includes: (1) attorney Mohammed Ali  
2 Sabry, Defendant’s counsel in Sri Lanka, (2) attorney Hasaka U. Ratnamalala, a  
3 Canadian lawyer, (3) Namal Rajapaksa, Defendant’s nephew, (4) Menaka  
4 Wijethilaka, a public relations agent, and (5) opposing counsel in this litigation.

5       Less than a week after being served, Defendant admitted publicly that he had  
6 retained counsel in the United States to litigate this case. On April 12, 2019,  
7 Defendant told reporters at the Colombo Airport that his “...lawyers over there [in  
8 the United States] are taking steps to get a . . . [stay] order from the court.” Sweeney  
9 Decl., Ex. A at 2. According to a *New York Times* article, Defendant’s spokesperson,  
10 Milinda Rajapaksa, stated on or around April 19, 2019 that the Defendant’s legal  
11 counsel in the United States would take action “if required.” Sweeney Decl., Ex. B  
12 at 2. Moreover, Mohammed Ali Sabry, the head of the Defendant’s legal team in Sri  
13 Lanka, stated that this litigation would be handled exclusively from the United  
14 States. *Id.* Thus at all times relevant to this Application, Defendant acted through a  
15 coordinated team of counsel and agents.

16       And at all relevant times, Defendant had actual notice of the complaint and  
17 Plaintiff’s status as a represented party. This is clear from Defendant’s public  
18 statements disparaging Plaintiff’s counsel. During Defendant’s April 12 press  
19 conference at the Colombo airport, Defendant discussed his response to this case.  
20 Sweeney Decl., Ex. A. He accused members of Plaintiff’s legal team of being part  
21 of an “international NGO belonging to the LTTE diaspora.” *Id.* The “LTTE” is an  
22 acronym for the Liberation Tigers of Tamil Eelam, a designated foreign terrorist  
23 organization. Neither Plaintiff nor Plaintiff’s counsel is affiliated with the LTTE.

24       Disparaging opposing counsel as terrorists could perhaps be chalked up to the  
25 rough-and-tumble of litigation. Threatening a plaintiff with retaliation cannot. Since  
26 April 12, Defendant’s counsel and agents have made repeated *ex parte* contacts with  
27 the Plaintiff in an effort to unduly influence Plaintiff to abandon his case. Plaintiff’s  
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1 requests to halt these *ex parte* contacts—and counsel’s cease and desist letters—  
2 have gone largely ignored. Even after opposing counsel in this case received a cease  
3 and desist letter on April 24, he failed to provide any response until Plaintiff’s  
4 counsel telephoned him on April 26, at which point he stated that (1) he was looking  
5 into the matter; (2) he has not contacted any of the individuals who contacted the  
6 Plaintiff *ex parte*; (3) that he is unable to communicate with those individuals (to  
7 whom Plaintiff’s counsel had sent cease and desist letters); and (4) that he does not  
8 concede that any contact was even made. Sweeney Decl. ¶ 13.

9 **A. “Do you know you could be charged”: Threats of retaliation and *ex***  
10 ***parte* contacts by counsel in Canada.**

11 On or around April 8—the day after Defendant was served with the  
12 complaint—Plaintiff received a phone call from Hasaka U. Ratnamalala (“Mr.  
13 Ratnamalala”), a Canadian lawyer who claims to represent Defendant indirectly.  
14 Sweeney Decl., ¶ 9. Mr. Ratnamalala is an active member of the Law Society of  
15 Manitoba. Sweeney Decl., Ex. C. During the April 8 phone call, Mr. Ratnamalala  
16 discouraged Plaintiff from pursuing his case: sounding angry and agitated he stated,  
17 “Why would you file a case like this?” Sweeney Decl., ¶ 9. Uncomfortable with Mr.  
18 Ratnamalala’s tone, Plaintiff ended the call. *Id.*

19 Mr. Ratnamalala followed up on April 17, when he contacted Plaintiff by  
20 Viber, an online messenger service. Mr. Ratnamalala identified himself as  
21 Defendant’s indirect representative. Sweeney Decl., Ex. D at 1 (“I am not Gota’s  
22 [Defendant’s nickname] direct Rep but if you wanna talk we can have a talk”).

23 Mr. Ratnamalala attempted to pressure Plaintiff to abandon his case against  
24 Defendant: “How much” “If you want compensation [sic] you should sue the GOSL  
25 [Government of Sri Lanka] not Gota he has nothing”. *Id.* at 2. After Plaintiff pointed  
26 out that Mr. Ratnamalala is a lawyer, Mr. Ratnamalala made a veiled threat that  
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1 Plaintiff would face legal retaliation: “Do you know you can be charged in Canada  
2 [sic]”. *Id.*

3 Mr. Ratnamalala then asked Plaintiff to meet him outside the presence of  
4 Plaintiff’s counsel, “Ok are you avail on 27th I am free”, and stated he is in “Ottawa  
5 only 5hrs [away]” from Plaintiff. *Id.* at 3. Without waiting for an answer, Mr.  
6 Ratnamalala declared, “I will let you know the time and place later morning is  
7 preferred. No pics, no recordings.” *Id.* at 4. Mr. Ratnamalala then made several  
8 comments obviously intended to pressure Plaintiff and influence his testimony:  
9 “You are used by many ppl”, “You have end up a billyboy for many”,<sup>1</sup> “I dont [sic]  
10 know when you will realize that”, “I dont know”. *Id.*

11 **B. “GR and other people running this”: *Ex parte* requests for**  
12 **admissions and bad-faith settlement pressure.**

13 A spokesperson for the Rajapaksa family has repeatedly bypassed counsel and  
14 contacted Plaintiff to elicit admissions and pressure Plaintiff to abandon his claims.

15 On or around April 16, 2019, Plaintiff was contacted via iMessage by an  
16 individual named Menaka Wijethilaka. Sweeney Decl., Ex. E. Plaintiff is familiar  
17 with Mr. Wijethilaka through Sri Lankan social circles. On information and belief,  
18 Mr. Wijethilaka serves as the public relations agent of Defendant’s nephew Namal  
19 Rajapaksa (“NR”), son of the former Sri Lankan president, Defendant’s brother  
20 Mahinda Rajapaksa.

21 Namal Rajapaksa is, on information and belief, a spokesperson for Defendant.  
22 On April 8, 2019, the day after Defendant was served, Namal Rajapaksa posted the  
23 following message on Twitter: “As far as we’re aware @GotabaayaR [Defendant’s  
24 Twitter username] never received summons of any form. Not sure if I’m appalled or  
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26  
27 <sup>1</sup> “Billy boy” is a slang term used to reference a condom.  
<https://www.urbandictionary.com/define.php?term=billy%20boy>

1 amused by the lengths some people will go to publicize unsubstantiated claims based  
2 on strategic propaganda.” Sweeney Decl., Ex. F. Mr. Rajapaksa’s use of the first-  
3 person plural and a common set of talking points belies his coordination with  
4 Defendant’s team.

5 Mr. Wijethilaka has pressured Plaintiff—over his objections—to abandon his  
6 claims and accept a settlement without benefit of counsel. On or around April 16,  
7 Mr. Wijethilaka asked Plaintiff via iMessage about his motives for bringing the case  
8 and what compensation he sought. Sweeney Decl., Ex. E at 1. “And Roy can’t we  
9 go for a settlement with GR? Any kind of [sic]”. *Id.* Plaintiff responded: “I can’t  
10 comment on this lawyer has to deal with . . .”. *Id.*

11 Despite Plaintiff’s instruction that any communications must proceed through  
12 his lawyers, Mr. Wijethilaka persisted: “As a final result what’s your idea”. *Id.* “NR  
13 and me can talk with GR,” said Mr. Wijethilaka, in an apparent reference to  
14 Defendant Gotabaya Rajapaksa, “First of all, we need to know what you need?  
15 [sic].” *Id.* at 2. He continued: “Justice I can’t involve but compensation I can help.”  
16 *Id.* at 3. And Mr. Wijethilaka made it clear that his efforts were being coordinated  
17 with Defendant and his agents: “Few of GR [Gotabaya Rajapaksa] and other people  
18 . . . running this . . . I don’t have any benefits”. *Id.*

19 After Plaintiff stated that he feared for his family’s safety, Mr. Wijethilaka  
20 stated: “Yes I can do something from my side. And Roy if u ok I can discuss with  
21 goda [sic – “Gota” is a popular nickname for Defendant] with this matter when I’m  
22 back.” *Id.* at 4.

23 After ignoring Plaintiff’s instruction that any settlement discussions must  
24 proceed through counsel, Mr. Wijethilaka went on to attempt to obtain admissions  
25 that Plaintiff’s case is merely a smear campaign backed by the Defendant’s political  
26 opponents. He asked, “For your civil case against gota any UNP or My3 ppl  
27 behind?” *Id.* at 5. UNP, or the United National Party, is a political party in Sri Lanka.  
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1 My3 refers to Maithripala Sirisena, the current president of Sri Lanka. Both are  
2 considered political opponents of the Rajapaksa family. When Plaintiff answered in  
3 the negative, Mr. Wijethilaka continued: “But all our ppl thinks someone behind you  
4 in this matter”. *Id.*

5 Mr. Wijethilaka’s questions sought to elicit statements from Plaintiff that  
6 would substantiate the public claims made by Defendant in his April 12 press  
7 briefing that Plaintiff’s lawsuit is politically motivated. Sweeney Decl., Ex. A.

8 **C. Inaction and acquiescence: Plaintiff’s cease and desist letters go**  
9 **largely ignored.**

10 On April 23, 2019, Plaintiff’s counsel sent cease and desist letters to Mr.  
11 Wijethilaka, Mr. Ratnamalala, and Mohammed Ali Sabry (purportedly the head of  
12 the Defendant’s legal team in Sri Lanka), demanding that Defendant and his counsel  
13 and agents refrain from all *ex parte* communication with the Plaintiff. Sweeney  
14 Decl., Ex. G. None of the recipients responded to Plaintiff’s letters.

15 However, around an hour after the last letter was sent out by email,  
16 Defendant’s U.S. counsel telephoned Plaintiff’s counsel for the first time and stated  
17 that he has been retained to represent the Defendant. Sweeney Decl. ¶ 10. During  
18 that call, defense counsel stated nothing about Plaintiff’s cease and desist letters or  
19 *ex parte* contacts by Defendant’s agents. *Id.*

20 After learning the identity of Defendant’s U.S. lawyer, Plaintiff’s counsel sent  
21 a letter on April 24 informing him of the *ex parte* contacts—including the identify  
22 of the individuals making those improper contacts—and demanding that Defendant  
23 and his counsel and agents refrain from all *ex parte* communication with the  
24 Plaintiff. Sweeney Decl., Ex. H. On April 25, defense counsel emailed Plaintiff’s  
25 counsel four times asking for a stipulation to extend the deadline to respond to the  
26 complaint by 60 days and urging Plaintiffs to respond promptly as Defendant “would  
27 like to file [a 30-day stipulation] today.” Sweeney Decl. ¶ 12.

1 Remarkably, not one of those emails responded to Plaintiff’s cease and desist  
2 letter. *Id.* On April 26, 2019, Plaintiff’s counsel emailed and telephoned defense  
3 counsel to confer about the *ex parte* contacts and to advise him of Plaintiff’s intent  
4 to file an *ex parte* application. Sweeney Decl. ¶ 13. The substance of that telephone  
5 conversation was memorialized in Mr. Ulin’s subsequent email, which stated, *inter*  
6 *alia*, that (1) he was “looking into the matter”; (2) that he “ha[s] not communicated  
7 with any of the individual named in your letter”; (3) that he is not “able to  
8 communicate and coordinate with these individuals”; and (4) that “we do not  
9 concede that any contact was made.” *Id.* Mr. Ulin also stated that he opposes the  
10 application. *Id.* However, Plaintiff has received no assurances that the *ex parte*  
11 harassment will cease. Nor has defense counsel provided any assurance that he has  
12 taken steps to advise Defendant and his other counsel and agents to refrain from  
13 further misconduct.

### 14 **III. ARGUMENT**

#### 15 **A. An *ex parte* application is warranted because Plaintiff is in** 16 **immediate danger of intimidation and undue influence.**

17 An *ex parte* application may be granted upon a showing of irreparable harm  
18 or immediate danger. [Mission Power Engineering Co. v. Continental Casualty](#)  
19 [Company](#), 883 F.Supp. 488, 492 (C.D. Cal. 1995). “It must be established that the  
20 moving party is without fault in creating the crisis that requires *ex parte* relief . . .”  
21 *Id.*

22 An *ex parte* application is warranted here for several reasons. *First*,  
23 Defendant’s bad-faith conduct poses an imminent threat of prejudice. The Defendant  
24 is a sophisticated former official and repeat litigant, armed with an international legal  
25 and public relations team. Defendant’s counsel and agents have contacted Plaintiff—  
26 an inexperienced litigant—outside the presence of Plaintiff’s counsel, to gain unfair  
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1 advantage. This pressure campaign is particularly injurious since Plaintiff suffers  
2 ongoing trauma from his torture at the hands of Defendant's agents in Sri Lanka.

3       *Second*, although Plaintiff's counsel have taken actions to prevent further *ex*  
4 *parte* contacts by sending cease and desist letters, they are concerned that such  
5 contacts will continue without an order from this Court. Defense counsel's lack of  
6 timely response is concerning: counsel did not acknowledge receipt of the cease and  
7 desist letter for 48 hours, and only did so after receiving notice of this Application.  
8 He has not contacted Mr. Ratnamalala, Mr. Wijethilaka, and Mr. Sabry, two of  
9 whom are Defendant's attorneys in Canada and Sri Lanka and all of whom are close  
10 agents of the Defendant. In particular, Mr. Ulin stated he was *unable* to communicate  
11 with these individuals despite the fact that Plaintiff's counsel were able to locate  
12 their email addresses and other contact information through an internet search in  
13 order to deliver the cease and desist letters. Hence, within those 48 hours, Defense  
14 counsel had taken no steps to investigate the misconduct. Nor *to this day* has defense  
15 counsel provided any assurance that he has advised Defendant and his agents to  
16 refrain from improper communications.

17       *Third*, the danger is immediate: further violations of the no-contact rule could  
18 result in inadvertent disclosures, circumvention of discovery, and the intimidation  
19 of Plaintiff.<sup>2</sup> Finally, Plaintiff is without fault: he did not invite settlement  
20 discussions with Defendant's agents, and his requests to communicate through his  
21 counsel were ignored.

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25 <sup>2</sup> While Plaintiff was ready to file this *ex parte* application on Friday, April 26, 2019,  
26 Plaintiff's counsel decided to delay the filing until Monday, April 29, 2019 as a  
27 courtesy to defense counsel, in light of the 24-hour opposition requirement under the  
28 Court's standing order. This decision in no way suggests that the resolution of this  
matter is less urgent to the Plaintiff.

1 In short, Plaintiff has no effective and timely way to abate Defendant's  
2 misconduct other than by order of the Court.

3 **B. The *ex parte* contacts violate the no-contact principle.**

4 California Rule of Professional Conduct 4.2, the “no-contact rule,” provides  
5 that “[i]n representing a client, a lawyer shall not communicate directly or indirectly  
6 about the subject of the representation with a person the lawyer knows to be  
7 represented by another lawyer in the matter, unless the lawyer has the consent of the  
8 other lawyer.” Cal. R. Prof. Conduct 4.2.

9 The fact that defense counsel only made a formal appearance after these  
10 improper contacts does not mean there was no violation of the no-contact rule. Under  
11 Rule 5.3, a lawyer is responsible for the conduct of a non-lawyer if the lawyer, *inter*  
12 *alia*, orders, ratifies, or fails to remediate the unethical conduct of the non-lawyer.  
13 *Id.* Rule 5.3(c). Defendant has, on information and belief, engaged counsel in three  
14 countries—including the recently-revealed lawyers in the United States. *See*  
15 Sweeney Decl., Ex. A (Colombo Airport statement) and Ex. B. (statement of  
16 Defendant's Sri Lankan counsel to the *New York Times*). These lawyers and agents  
17 form a coordinated defense team for Defendant, which includes opposing counsel in  
18 this litigation and the individuals harassing Plaintiff. *See* Sweeney Decl., Ex. E at 3  
19 (where a Rajapaksa spokesman states that a “[f]ew of GR [Gotabaya Rajapaksa] and  
20 other people . . . [are] running this [sic]”). Defendant's team knew that Plaintiff was  
21 represented by counsel: Defendant labeled them terrorists on April 12.

22 Even if opposing counsel in the U.S. did not himself make *ex parte* contacts,  
23 he was put on notice of the misconduct on April 24, and failed to take meaningful  
24 remedial action. Acquiescence is equally in breach of the no-contact rule.  
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1           **C. The *ex parte* contacts amount to a bad-faith effort to influence**  
2           **Plaintiff and merit sanctions.**

3           Courts are vested with the inherent power to control the conduct of litigants.  
4           See [Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 \(2017\)](#). “This  
5           power reaches both conduct before the court and that beyond the court’s confines . .  
6           .” [Chambers v. NASCO, Inc., 501 U.S. 32, 43 \(1991\)](#) (quoting [Young v. United](#)  
7           [States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798 \(1987\)](#)). As part of that power  
8           a court may “impose sanctions for bad faith, which includes a broad range of willful  
9           improper conduct.” [Fink v. Gomez, 239 F.3d 989, 992 \(9th Cir. 2001\)](#).

10           Improperly influencing a witness is a quintessential act of bad faith. See [Ty](#)  
11           [Inc. v. Softbelly’s, Inc., 517 F.3d 494, 498 \(7th Cir. 2008\)](#). In *Ty Inc.*, the Seventh  
12           Circuit approved the imposing of proportionate sanctions where a party telephoned  
13           an adverse witness to discourage their testifying. *Id.* (reversing a case-dispositive  
14           sanction). Similarly, in [Youngevity Int’l v. Smith, No. 16-CV-704-BTM-JLB, 2018](#)  
15           [WL 747658, at \\*2 \(S.D. Cal. Feb. 6, 2018\)](#), the court imposed sanctions against a  
16           party who attempted to dissuade and influence witnesses via text messages. Finding  
17           bad-faith in these *ex parte* contacts, the court assessed attorney’s fees and an adverse  
18           instruction. *Id.* These cases echo the Supreme Court’s teaching that “bad faith”  
19           conduct is sanctionable when, like Defendant Rajapaksa, a party “disrupts the  
20           litigation.” [Chambers, 501 U.S. at 33](#).

21           Here, the *ex parte* communications leave no doubt that they were done in bad  
22           faith and for the improper purpose of disrupting the litigation and influencing a  
23           witness against Defendant. The Canadian lawyer, Mr. Ratnamalala, made a veiled  
24           threat that Plaintiff could face criminal charges in Canada as retaliation and tried to  
25           lure him into meeting under suspect circumstances: “No pics, no recordings.”  
26           Sweeney Decl., Ex. D at 4.

1 Equally oppressive were the repeated requests for Plaintiff to “admit” that his  
2 case was contrived by political parties in Sri Lanka. Not only did these requests for  
3 admissions circumvent formal discovery—they also carried implicit threats that  
4 Plaintiff would be subjected to a public smear campaign. That threat seems very real  
5 given Defendant’s accusation tying Plaintiff’s legal team to a terrorist organization.

6 Finally, good-faith settlement overtures are entirely appropriate.<sup>3</sup> But the  
7 overtures here are not. They bear the hallmarks of undue influence, including  
8 harassment, isolation from counsel, and threats of malicious prosecution. *See Kelly*  
9 *v. Provident Life & Acc. Ins. Co.*, 734 F. Supp. 2d 1085, 1104 (S.D. Cal. 2010) (citing  
10 factors of undue influence that would warrant rescinding a settlement agreement);  
11 *Loatman v. Summit Bank*, 174 F.R.D. 592, 600–01 (D.N.J. 1997) (finding a bank  
12 acted in bad faith and for oppressive purpose when its vice-president personally  
13 attempted to settle the case despite specific requests not to contact the plaintiff  
14 without counsel present).

15 **D. Estoppel from contesting service of process and personal jurisdiction**  
16 **is an appropriate sanction.**

17 Ultimate fault lies with Defendant, not Defendant’s U.S. counsel. Because  
18 Defendant has already participated in the litigation through bad-faith disruptions, he  
19 should be estopped from objecting to the court’s personal jurisdiction. Waiver of  
20 personal jurisdiction is a long-established sanction for misconduct: “for various  
21 reasons, a defendant may be estopped from raising the issue.” *Ins. Corp. of Ireland*  
22 *v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704 (1982). As the Supreme  
23 Court held, a “sanction applied to a finding of personal jurisdiction” creates no due  
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26 <sup>3</sup> *See Lewis v. S.S. Baune*, 534 F.2d 1115, 1122 (5th Cir. 1976) (“Courts have  
27 consistently held that parties have a right to settle or compromise their litigation  
28 without the knowledge or consent of their counsel.”).

1 process problem. [Id. at 704-705](#). It is based on “the actions of the defendant” which  
2 “amount to a legal submission to the jurisdiction of the court, whether voluntary or  
3 not.” [Id. at 704-705](#).

4 Here, Defendant had the benefits of bad-faith misconduct before contesting  
5 service and personal jurisdiction in his responsive pleading. He should now bear the  
6 burdens of litigation. Pursuant to *Insurance Corporation of Ireland*, the Court should  
7 take as established the jurisdictional fact that Defendant was personally and properly  
8 served with process within this District. *See* ECF No. 9, Ex. A (proof of service).  
9 Defendant will be minimally prejudiced: his personal service is well-documented,  
10 and personal jurisdiction “based on physical presence alone” is long established as  
11 “due process.” [Burnham v. Superior Court of California, Cty. of Marin, 495 U.S.](#)  
12 [604, 619 \(1990\)](#). This sanction will serve to offset the time and resources spent by  
13 the Court and Plaintiff in responding to Defendant’s misconduct. The Court should  
14 therefore estop Defendant from contesting service of process and personal  
15 jurisdiction.

#### 16 **IV. CONCLUSION**

17 For the foregoing reasons, Plaintiff respectfully requests that the Court order  
18 the Defendant and his counsel and agents to refrain from all *ex parte* contacts with  
19 the Plaintiff. Plaintiff further requests that the Court exercise its inherent sanctions  
20 power to estop Defendant from contesting service of process or personal jurisdiction.  
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**PROOF OF SERVICE**

I, Bonny E. Sweeney, declare that I am over the age of eighteen (18) and not a party to the entitled action. I am a partner at the law firm of HAUSFELD LLP, and my office is located at 600 Montgomery Street, Suite 3200, San Francisco, CA 94111.

On April 29, 2019, I caused to be served in the manner indicated below, documents described as follows: **PLAINTIFF’S EX PARTE APPLICATION AND MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF BONNY E. SWEENEY AND ACCOMPANYING EXHIBITS; AND PROPOSED ORDER** on the interested party in this action in the manner stated below:

<input checked="" type="checkbox"/>	By CM/ECF
<input checked="" type="checkbox"/>	Pursuant to the Court’s Standing Order No. 6, by facsimile to the following:  John C. Ulin Fax: (213)243-4199
<input checked="" type="checkbox"/>	By electronic mail to John.Ulin@arnoldporter.com

Executed on April 29, 2019 at San Francisco, CA.

/s/ Bonny E. Sweeney  
 Bonny E. Sweeney