

1 DANIEL M. PETROCELLI (Cal S.B. #97802)
 (admitted *pro hac vice*)
 2 dpetrocelli@omm.com
 DAVID MARROSO (Cal. S.B. #211655)
 3 (admitted *pro hac vice*)
 4 dmarroso@omm.com
 O'MELVENY & MYERS LLP
 1999 Avenue of the Stars, 7th Floor
 5 Los Angeles, CA 90067-6035
 Telephone: (310) 553-6700
 6 Facsimile: (310) 246-6779

7 ERIC D. HONE
 Nevada Bar No. 8449
 8 ehone@gordonsilver.com
 FRANCESCA V. VAN BUREN
 9 Nevada Bar No. 10260
 fvanburen@gordonsilver.com
 10 GORDON SILVER
 3960 Howard Hughes Pkwy., 9th Floor
 11 Las Vegas, Nevada 89169
 Tel: (702) 796-5555
 12 Fax: (702) 369-2666
 Attorneys for Plaintiff and Counter-
 13 Defendant Emmanuel "Manny" Pacquiao

14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF NEVADA**

17 EMMANUEL PACQUIAO, a
 18 Philippines resident,

19 Plaintiff,

20 v.

21 FLOYD MAYWEATHER, JR., a
 Nevada resident; FLOYD
 22 MAYWEATHER, SR., a Michigan
 resident; ROGER MAYWEATHER,
 23 a Nevada resident;
 MAYWEATHER PROMOTIONS
 24 LLC, a Nevada limited liability
 company; RICHARD SCHAEFER, a
 25 California resident; OSCAR DE LA
 HOYA, a California resident,

26 Defendants.
 27
 28

Case No. 2:09-cv-02448 LRH-RJJ

Honorable Larry R. Hicks

**MOTION FOR DEFAULT AND
 DISMISSAL AGAINST FLOYD
 MAYWEATHER, JR.**

FED. R. CIV. P. 37

[MEMORANDUM OF POINTS AND
 AUTHORITIES; DECLARATION OF
 DAVID MARROSO FILED
 CONCURRENTLY HEREWITH]

1 PLEASE TAKE NOTICE that Plaintiff and Counter-Defendant Emmanuel
2 Pacquiao will and hereby does move this Court for (a) entry of default against
3 Defendant and Counter-Plaintiff Floyd Mayweather Jr. and (b) dismissal with
4 prejudice of Mayweather Jr.'s counterclaim; (c) an order requiring Mayweather Jr.
5 to reimburse Pacquiao for attorneys' fees in connection with Mayweather's
6 misconduct giving rise to this motion. Pacquiao seeks this relief pursuant to
7 Federal Rule of Civil Procedure 37 and the Court's inherent authority to manage its
8 cases, control the docket, and protect the integrity of the judicial system.

9 Pursuant to Local Rule 26-7, counsel for Pacquiao and Mayweather Jr. met
10 and conferred in good faith, but were unable to resolve this dispute. (Declaration of
11 David Marroso ("Marroso Decl.") ¶¶ 42-43.)

12 This Motion is based upon the accompanying Memorandum of Points and
13 Authorities, the Declaration of David Marroso attached hereto, all matters of which
14 this Court may take judicial notice, all pleadings and other documents on file in the
15 action, the evidence presented, and such oral argument as the Court may allow.

16
17 Dated: August 3, 2011

DANIEL M. PETROCELLI
DAVID MARROSO
O'MELVENY & MYERS LLP

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21 By: /s/ David Marroso
David Marroso
Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Floyd Mayweather, Jr. may be 41-0 in the boxing ring, but he is not above the
4 law. Mayweather deliberately defied a Court order to appear at deposition. To
5 justify his conduct—and his categorical refusal to appear at any of the 24
6 alternative dates offered by Manny Pacquiao—Mayweather represented to the
7 Court he was in the throes of training camp so consuming he could not, under any
8 circumstances, appear at deposition before the end of September. Mayweather
9 went so far as to accuse Pacquiao of harassment, saying, as a boxer himself,
10 Pacquiao should know elite fighters must avoid all distractions during the lead-up
11 to a fight. As we explain below, Mayweather’s representations were demonstrably
12 false.

13 Mayweather has no regard for the discovery process, this Court’s orders, or
14 the gravity of these proceedings. Mayweather has shown that, in his world, he—
15 not the Court—decides how, when, and on what terms this case will proceed. If a
16 deadline ordered by the Court interferes with his social calendar, Mayweather
17 manufactures bogus excuses. When he got caught, Mayweather cavalierly said, “no
18 harm, no foul” because discovery remains open and he will appear for a deposition
19 when he is good and ready. But, lying to the Court and opposing counsel is an
20 indefensible foul and Pacquiao has been irrevocably harmed.

21 While refusing to participate in the federal court process, Mayweather and
22 his conspirators continue to assault Pacquiao’s reputation in the court of public
23 opinion. Mayweather was recently filmed at a gym bragging that “[u]nlike
24 Pacquiao, my fighters are all-natural.” Just a few days ago, Mayweather’s uncle
25 falsely said he “know[s]” Pacquiao is taking “steroids” because “Pacquiao’s camp
26 told me.”

27 Enough is enough. Mayweather has forfeited his right to participate in the
28 process. Default judgment in favor of Pacquiao should be ordered, Mayweather’s

1 counter-claim should be dismissed with prejudice, and Mayweather should be
2 ordered to reimburse Pacquiao for attorneys' fees and costs incurred in this action.

3 **II. STATEMENT OF FACTS**

4 **A. Mayweather Defamed Pacquiao.**

5 In late 2009, driven by envy and spite, Mayweather and his conspirators
6 embarked on a campaign to destroy Pacquiao's reputation, integrity, and legacy by
7 falsely accusing him of taking performance-enhancing drugs. It was not one errant
8 statement or ambiguous remark taken out of context. Rather, for months, the
9 defendants told the world: (a) "[t]he steroids aren't going to make [Pacquiao] no
10 faster [but will] make him relentless and hit strong"; (b) "Pacquiao's got the power
11 pellets ... and the steroid juice"; (c) "I know he's got somethin' in his system
12 anyway. We gonna find out what he got in his system when these real doctors have
13 him take the tests"; and (d) "[Pacquiao] is on the A-side meth." (Dkt. No. 13 ¶¶ 28-
14 29, 40-42.)

15 Pacquiao filed a complaint for defamation in federal court on December 30,
16 2009. (Dkt. No. 1). He amended the complaint on March 17, 2010, to identify
17 additional false statements leveled by defendants. (Dkt. No. 13 ¶¶ 41-42.)

18 **B. Discovery Commences.**

19 The merits phase of the case was delayed because the defendants filed
20 motions to dismiss under Rule 12(b)(6) and Nevada's anti-SLAPP statute and
21 refused to respond to discovery while the motions were pending. (Dkt. No. 15, 48 -
22 49, 74.) The Court denied all defendants' motions by March 18, 2011. (Dkt. No.
23 109.)

24 The parties held their Rule 26 Conference on April 25. Given the length of
25 time that had passed since Pacquiao filed his complaint and in light of continued
26 statements made by defendants about Pacquiao, Judge Johnston recognized "value
27 in moving this along." "[O]bviously, the longer this continues," the Court held, "the
28

1 more challenging it is for the plaintiff and his alleged claims here and what he's
2 facing." (Marroso Decl., Ex. 3 at 15-16.)

3 Accordingly, on June 2, 2011, the Court issued an aggressive but reasonable
4 Scheduling Order. (Dkt. No. 119.) The Court set October 31, 2011 as the deadline
5 to file all counterclaims and cross-claims, third-party actions, requests to amend or
6 supplement the pleadings, and motions to join additional parties. (*Id.*) Expert
7 disclosures are due on December 1, 2011. And all discovery, fact and expert, must
8 be completed by January 31, 2012.

9 **C. Mayweather Defies Court Orders and Engages in Self-Help.**

10 The day after the Court issued its Scheduling Order, Pacquiao served a
11 Notice of Deposition on Mayweather, calling for him to appear for examination in
12 Las Vegas, on Friday, June 17, 2011. To advance the case expeditiously, the
13 Notice did not require Mayweather to locate or produce any documents. (Marroso
14 Decl., Ex. 6.)

15 The next day, June 4, Mayweather rejected the June 17 date and wrote he
16 could not appear for deposition any day in June because "he will be in training
17 Camp" for a fight scheduled for September 17. Mayweather suggested scheduling
18 his deposition three months later after his boxing match. (Marroso Decl., Ex. 7.)

19 Pacquiao promptly responded pointing out that "[t]his case has been pending
20 since March 22, 2010," Mayweather had filed counter-claims seeking
21 compensatory and punitive, and "[i]t is not reasonable for Mr. Mayweather, Jr. to
22 refuse to appear for deposition for 18 months." In an effort to work cooperatively,
23 Pacquiao offered "to take Mr. Mayweather Jr.'s deposition on June 15, June 16"—
24 the dates immediately before the Friday deposition—or "any day the week of June
25 20." (Marroso Decl., Ex. 8.) Mayweather rejected every alternative insisting again
26 he was in intense "training." (Marroso Decl., Ex. 9.) Pacquiao even offered to
27 "take the deposition at your offices rather than ours" and to do so on "consecutive
28 days to avoid requiring Mr. Mayweather, Jr.'s attendance for an entire day." (*Id.*)

1 Mayweather rejected every option. This time, Mayweather claimed “none of
2 [the proposed dates] are available inasmuch as Mr. Mayweather will be on the
3 promotional portion of the required media campaign to promote the fight the week
4 of the 20th and training camp will occur immediately thereafter.” (Marroso Decl.,
5 Ex. 10) (emphasis added). Mayweather’s admission that training camp would
6 occur “after” the press tour contradicted his earlier assertion he could not attend a
7 deposition on June 17 because he was already in training camp. Mayweather did
8 not even try to explain why he was unavailable on June 15 and 16—dates *before* the
9 supposed press tour commenced. And, as we later learned, Mayweather’s press
10 tour did not begin, June 20, but, rather, the following week, June 28, 2011.
11 (Marroso Decl., Ex. 17.)

12 Claiming to have “begun an intense training regimen,” Mayweather filed an
13 Emergency Motion for Protective Order seeking to quash the notice and “delay[]
14 the deposition several months.” (Dkt. No. 122 at 2.) After receiving Mayweather’s
15 motion, Pacquiao tried “accommodate your schedules, work cooperatively, and
16 avoid burdening the Court” by Pacquiao offering to take the deposition over the
17 weekend “on June 18 and/or June 19, before [Mayweather] leaves for his
18 promotional tour, or on June 24 and/or 25 when he returns but before he begins
19 training camp in earnest.” (Marroso Decl., Ex. 11.) When Mayweather rejected
20 these alternatives, Pacquiao filed an opposition. (Dkt. No. 123.)

21 After carefully reviewing the papers and evidence, Judge Johnston concluded
22 that, “given the willingness of Plaintiff to be flexible in the scheduling and taking
23 of Defendant Floyd Mayweather, Jr.’s deposition and finding no justifiable reason
24 to postpone the taking of said deposition for three months or more,” the motion “is
25 DENIED.” Judge Johnston “HEREBY ORDERED that the deposition of
26 Defendant Floyd Mayweather, Jr. shall proceed as noticed.” (Dkt. No. 124.)

27 The same day Mayweather filed an Emergency Appeal of Judge Johnston’s
28 Order and asked for oral argument to “explain the rigors of the intense training

1 schedule which Mr. Mayweather ... is required to engage in order to be prepared
2 for a title fight.” (Dkt. No. 127.) Mayweather’s attorney filed a sworn declaration
3 stating he had informed Pacquiao “Mayweather would be entering training camp,”
4 which necessitates a “controlled schedule.” (Dkt. No. 125, Ex. A ¶¶ 6, 14.)

5 Mayweather also made the unilateral decision—contrary to law—that the
6 mere filing of an “appeal” obviated the need to attend the deposition. (Marroso
7 Decl., Ex. 13.) Pacquiao made clear the deposition was not voluntary and he
8 intended to comply with the Court Order. (Marroso Decl., Ex. 14.) Pacquiao
9 warned Mayweather that if he “chooses to defy the Court Order, we will take his
10 nonappearance and seek all appropriate relief, including but not limited to default
11 and dismissal of his cross-complaint.” (*Id.*)

12 Mayweather openly and deliberately defied the Court Order by not appearing.
13 (Marroso Decl., Ex. 16.) The Court denied Mayweather’s “Emergency Appeal”
14 and affirmed Judge Johnston’s ruling *nunc pro tunc*. (Dkt. No. 129.)

15 **D. Mayweather Lied Repeatedly to Avoid Appearing for Deposition.**

16 Pacquiao still tried to reschedule the deposition and avoid this motion. On
17 June 24, Pacquiao offered to take Mayweather’s deposition “on any mutually
18 agreeable day from now to July 8, 2011.” (Marroso Decl., Ex. 22.) Mayweather
19 rejected every date in part because of one of his attorney’s professional
20 commitments and in part because of his supposed training regimen. (Marroso
21 Decl., Ex. 23.) These assertions were specious.

22 In early and mid-July—when Pacquiao offered nearly every possible day for
23 deposition—Mayweather was not involved in all-consuming fight preparations or
24 avoiding all distractions. As we show below, Mayweather refused to participate in
25 Court-ordered discovery because it interfered with his partying schedule.

26 On July 1—a date Pacquiao offered to depose Mayweather and Mayweather
27 declined—Mayweather hosted a party at a nightclub in Atlanta.

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 **@FloydMayweather**
Floyd Mayweather July 1, 2011 Tweet 38



Come out and Enjoy The Mayweather Experience this 4th of July Weekend. Tonight in #ATL Club Primal and Tomorrow in #Vegas @ Club Eve.

[Login to leave a comment](#)

(Marroso Dec., Ex. 31.)

On dates he professed to be so focused on fight preparations that he could not comply with a Court order, Mayweather actually danced, partied, and handed out bottles of champagne to partygoers:



(Marroso Decl., Exs. 32-33.)

The festivities continued. The next day, July 2, Mayweather encouraged fans to join him “Club Eve in Aria Hotel in Las Vegas.” (Marroso Decl., Ex. 30.) On

1 July 3, Mayweather attended an adults-only “Midnite Theme Park Party” at Circus
2 Circus in Las Vegas to celebrate rapper 50 Cent’s birthday. (Marroso Decl., Ex.
3 30.)

4 Misled about Mayweather’s true whereabouts and commitments, Pacquiao
5 offered to take the deposition “any day the week of July 12.” (Marroso Decl., Ex.
6 27.) Mayweather refused, claiming to be unavailable and accusing Pacquiao of
7 “gamesmanship” and intentional “interference” with his fight preparations. Once
8 again, Mayweather refused every alternative. (Marroso Decl., Exs. 28, 34.)
9 Mayweather boasted he is “the only elite boxer in the world to have a 41-0 record”
10 and “has this record because of his commitment to the fight preparation and training
11 and because he avoids the distraction of anything except preparation for and focus
12 upon the fight. This makes him unique.” (Marroso Decl., Ex. 34.) (emphasis
13 added.) The next day, July 6, Mayweather stated point blank he was “already in
14 training camp and is intensely preparing for his upcoming fight.” (Marroso Decl.,
15 Ex. 36.)

16 These representations were demonstrably false. Within 72 hours,
17 Mayweather traveled to Atlanta to host a pair of parties on July 9 and 10. (Marroso
18 Decl., Ex. 39.) Cameras captured Mayweather dancing, partying, and burning what
19 appears to be U.S. currency.



28 (Marroso Decl., Exs. 40-42.)

1 The next week, Mayweather traveled to Miami for a succession of social
2 events. On July 13—a date Pacquiao had offered for deposition and Mayweather
3 refused—Mayweather was caught on film at yet another nightclub party. (Marroso
4 Decl., Ex. 44.) Mayweather remained in Miami on July 14 and 15—two additional
5 days Pacquiao had offered to take his deposition—and, on July 16, sent a message
6 on the social networking website Twitter: “2nite I’m at club #Dream ... It’s going 2
7 be crazy.” (Marroso Decl., Ex. 30.) Later the same day he sent out another
8 message, “Miami is going down 2nite ... Money May always pack the spots.” (*Id.*)
9 Photographers captured Mayweather that night as well. (Marroso Decl., Ex. 45.)

10 **E. Mayweather Continued His Assault on Pacquiao.**

11 While refusing to respond to discovery and paralyzing Pacquiao from
12 prosecuting the case in court, Mayweather continues to make public, false
13 assertions that Pacquiao used performance-enhancing drugs.

- 14 • During an interview in January 2011, Mayweather stated: “When Manny
15 gave blood before the first Morales fight, he lost. He didn’t give blood
16 for the next two fights and he knocked Morales out with ease. A lot of
17 times, people don’t realize, giving blood doesn’t make you weak. *Not*
18 *being able to juice because you have to give blood makes you weak.*”
19 (Marroso Decl., Ex. 1.)
- 20 • In May 2011, Mayweather bragged to reporters about a boxer under his
21 tutelage: “Unlike Pacquiao, my fighters are all natural.” (Marroso Decl.,
22 Ex. 5.)
- 23 • During another interview in May 2011 Mayweather said, “so you going
24 to say that [Pacquiao’s] able to go from 105 [lbs] to 154 [lbs], and ya’ll
25 say you know what, ‘it’s all natural.’ That’s all I’m asking.” (Marroso
26 Decl., Ex. 4.)

27 Mayweather increased his assault on Pacquiao even after openly defying this
28 Court’s Order. On June 28, in discussing Pacquiao, Mayweather told reporters, “A

1 guy can come from another country and do it, no problem, but when Barry Bonds
2 does it, it's hold on." Readers knew exactly what Mayweather was implying—
3 "Floyd compared Pacquiao to baseball's polarizing figure Barry Bonds" and
4 "Floyd's referring to PEDs when saying 'it.'" (Marroso Decl., Ex. 26.) And on
5 July 20, Mayweather's trainer, uncle and conspirator falsely said he "know[s]"
6 Pacquiao is taking "steroids" because "Pacquiao's camp told me." (Marroso Decl.,
7 Ex. 46.)

8 **III. ARGUMENT**

9 When a party seeks sanctions for discovery misconduct, courts consider the
10 severity and willfulness of the disobedient party's misconduct and the prejudice to
11 the other party. *See* FED. R. CIV. P. 37; *U.S. v. Nat'l Med. Enter. Inc.*, 792 F.2d
12 906, 910 (9th Cir. 1986) (citing *United Artists Corp. v. La Cage Aux Folles, Inc.*,
13 771 F.2d 1265, 1270-71 (9th Cir. 1985) ("Rule 37(b), Fed.R.Civ.P., authorizes the
14 district court to impose a wide range of sanctions if a party fails to comply with a
15 discovery order."); *Allen v. Bayer Corp.*, 460 F.3d 1217, 1227-28 (9th Cir. 2006)
16 (considering prejudice to innocent party when reviewing district court sanction);
17 *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991) (same); *see*
18 *also In re Exxon Valdez*, 102 F.3d 429, 432 (9th Cir. 1996) (assessing nature of
19 disobedient party's misconduct when reviewing terminating sanction); *Williams v.*
20 *Credit One Fin.*, 2008 WL 2466693, at *5-6 (D. Nev. June 18, 2008) (considering
21 disobedient party's misrepresentations to court and impact on innocent party).

22 This is one of those rare cases where a litigant, through indefensible conduct
23 and demonstrable lies, has displayed such an utter disregard for orderly process, the
24 administration of justice, and the Court that default and dismissal are the only
25 appropriate remedy.

26 **A. Mayweather's Conduct is Inexcusable.**

27 Sharp tactics are one thing. But deliberately deceptive practices "undermine
28 the integrity of judicial proceedings." For that reason, "courts have inherent power

1 to dismiss an action when a party has willfully deceived the court and engaged in
2 conduct utterly inconsistent with the orderly administration of justice.” *Anheuser-*
3 *Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995).

4 Mayweather’s conduct (described above) was deliberately deceptive.
5 Mayweather has decided that he—not the Court—directs these proceedings. He
6 has determined that he—not the Court—decides when his deposition will take
7 place. If a Court interferes with his party schedule, Mayweather gins up phony
8 excuses. And if that does not work, he knowingly violates the Court’s directives.

9 Courts have found similar conduct sufficiently sever to merit termination. In
10 *Wachovia Bank, N.A. v. Chaparral Contr., Inc.*, 2010 U.S. Dist. LEXIS 64511 (D.
11 Nev. June 14, 2010), plaintiff sued Plise to collect on a promissory note. Plise
12 answered but refused to respond to discovery. The court ordered Plise to appear for
13 deposition but, like Mayweather, Plise ignored the order. *Id.* at *3. The court
14 granted default against Plise based on his “willful” violation of the court order and
15 the prejudice to “Plaintiff’s ability to prosecute its claims and prepare to meet any
16 trial testimony that Defendant [] might offer in defense.” *Id.* at *7-8.

17 Likewise, in *In re Sumitomo Copper Litig.*, 204 F.R.D. 58 (S.D. N.Y. 2001),
18 plaintiffs were unable to obtain dates for defendant’s deposition and the court was
19 ultimately forced to set the date for a telephonic deposition. *Id.* at 59. Defendant
20 declined to appear and openly defied the order. “Th[e] advertent disregard for a
21 Court order justifie[d] the imposition of a default judgment, in order to carry out the
22 purposes of Rule 37.” *Id.* at 60.

23 **B. Pacquiao Has Been Severely Prejudiced.**

24 Mayweather has already shown he does not care what the Court says; he will
25 not appear for deposition until the end of September. Mayweather takes the
26 position that because discovery does not close until January 2012, Pacquiao has
27 suffered no prejudice and can be made whole by reimbursement of costs for taking
28

1 his non-appearance. (Marroso Decl., Ex. 34.) This contention is groundless for at
2 least five reasons:

3 1. As an initial matter, Mayweather made this precise argument in his
4 “Emergency Motion” and “Emergency Appeal.” (Dkt. Nos. 122, 125.) The Court
5 rejected the contention because Mayweather demonstrated “no justifiable reason” to
6 postpone his deposition “for three months or more.” (Dkt. No. 124).

7 2. In this Circuit, “[u]nreasonable delay results in a *presumption* of injury
8 and prejudice.” *Hester v. Vision Airlines, Inc.*, 2010 WL 4553449, at *4 (D. Nev.
9 Nov. 3, 2010) (citing *Anderson v. Air West, Inc.*, 542 F.2d 522, 524 (9th Cir. 1976
10 (emphasis added))). Here, however, Pacquiao need not rely on a presumption.
11 Mayweather’s open defiance of the Court’s Order and flagrant, repeated
12 misrepresentations are sufficient on their own to warrant default. *See, e.g.*,
13 *Anheuser-Busch*, 69 F.3d at 348; *Williams*, 2008 WL 2466693 at *5.

14 3. Beyond that, Mayweather possesses first-hand information necessary to
15 prosecute this case. Nobody but Mayweather knows why he falsely accused
16 Pacquiao of using PEDs. *See Wynn v. Smith*, 117 Nev. 6, 16-17, 16 P.3d 424, 430
17 (2001). Furthermore, Mayweather possesses information Pacquiao needs to
18 identify *additional* witnesses, discovery and defendants, such as the identity of the
19 person who made false statements to the *New York Daily News*. (Dkt. No. 13 ¶ 39.)
20 Likewise, in March 2011, one of Mayweather’s close friends—a musician named
21 Curtis Jackson (nickname “50 Cent”)—publicly described Pacquiao as “Steroid
22 Pacquiao” on his Twitter account which is followed by 4 million people. (Marroso
23 Decl., Ex. 2.) Pacquiao is entitled to depose Mayweather about his role, if any, in
24 Mr. Jackson’s false statements to determine whether to amend or supplement the
25 complaint to include new defendants and statements. Mayweather’s conduct has
26 irreparably harmed Pacquiao’s ability to prosecute this case.

27 4. Mayweather also counter-claimed against Pacquiao for defamation.
28 The claim is meritless, but Pacquiao must be given the opportunity to obtain

1 discovery necessary to defend against it. Mayweather must answer questions about
2 his own use of foreign substances, status as public figure, and supposed damages.
3 By unilaterally postponing his deposition for three months during this critical
4 period, Mayweather has irrevocably compromised Pacquiao's ability to defend
5 against Mayweather's counter-claim.

6 5. To make matters worse, after violating the Court's Order, Mayweather
7 served sweeping discovery on Pacquiao, including three sets of requests for
8 production of documents and two sets of 17 special interrogatories and 39 requests
9 for admission. (Marroso Decl., Exs.18-20, 43, 48-49.) While refusing to answer a
10 single deposition question until "late September or early October," Mayweather
11 demanded that Pacquiao identify, among other things, every sparring partner he has
12 used for the past ten years and every doctor/medical professional he has seen in the
13 past ten years; and to produce every document used in preparing the complaint,
14 untold numbers of newspapers and other media articles, and scores of private
15 financial information. Just last week, Mayweather demanded to know what dates
16 Pacquiao trainer Freddie Roach and strength and conditioning coach Alex Ariza
17 would be available for deposition in *August*. (Marroso Decl., Ex. 47.)

18 Every day Mayweather has violated the Court Order and refused to be
19 deposed has increased the prejudice to Pacquiao because Pacquiao (a) has been
20 subject to further assaults on his reputation by Mayweather; (b) is unable to defend
21 himself against Mayweather's counter-claim, which seeks compensatory and
22 punitive damages; and (c) is unable to obtain information necessary to prosecute his
23 case or comply with the Court's deadline for bringing pre-trial motions. *See, e.g.,*
24 *Commodity Futures Trade Comm'n v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 771
25 (9th Cir. 1995) (failure to designate representative for deposition "severely
26 prejudiced" other party); *Hyde & Drath v. Baker*, 24 F.3d 1162, 1166-67 (9th Cir.
27 1994) (failure to appear at depositions "prejudiced" opponent and justified
28 dismissal of action); *Adriana Intl. Corp. v. Lewis & Co.*, 913 F.2d 1406, 1412

1 (1990) (failure to appear at scheduled depositions, among other discovery abuses,
2 prejudiced opponent and weighed in favor of default).

3 **C. Entry of Default Judgment and Dismissal with Prejudice Is**
4 **Warranted.**

5 “Under Rule 37(b)(2)(C), if a party fails to obey an order to provide
6 discovery, the court may dismiss the action, rendering a judgment by default
7 against the disobedient party.” *In re Exxon Valdez*, 102 F.3d 429, 432 (9th Cir.
8 1996) (internal quotation omitted); Fed. R. Civ. P. 37(b)(2)(v), (vi) (if a party
9 violates a discovery court, the court may issue an order “dismissing the action” and
10 “rendering default judgment”). In this District, courts consider five factors when
11 deciding whether terminating sanctions are appropriate. They are: (1) the public’s
12 interest in the expeditious resolution of litigation, (2) the court’s need to manage its
13 docket, (3) the risk of prejudice to the non-offending party, (4) the public policy
14 favoring disposition of cases on their merits, and (5) the availability of less drastic
15 sanctions. *See Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006); *Hester v.*
16 *Vision Airlines, Inc.*, 2010 WL 4553449, at *5 (D. Nev. Nov. 3, 2010) (quoting
17 *Henry v. Gill Inds.*, 983 F.2d 943, 948 (9th Cir. 1993).

18 Applying this test, courts have granted default judgment in similar
19 circumstances. This Court’s decision in *Williams v. Credit One Fin.*, 2008 WL
20 2466693 (D. Nev. June 18, 2008), is directly on point. There, plaintiff claimed she
21 was unable to respond to discovery “due to injuries.” When the Court learned
22 plaintiff failed to respond, not because of an injury, but because, like Mayweather,
23 she “devoted time to recreation and vacationing,” the Court dismissed her
24 complaint. The Court recognized that terminating sanctions are rare and reserved
25 for severe cases. However, direct misrepresentations to counsel and the Court
26 “made it impossible for the Court to effectively manage this case.” *Id.* at *5.

27 Here, Mayweather did not lie once. He professed to be unavailable for the
28 entire month of June and the first half of July due to an intense, all-consuming

1 training regimen. On July 6, Mayweather said point blank he “is already in training
2 camp and is intensely preparing for his upcoming fight.” (Marroso Decl., Ex. 36.)
3 That week, however, Mayweather jet-setted from coast to coast, partying at
4 nightclubs, making celebrity appearances, burning currency, and handing out
5 champagne. All the while, Mayweather continues to make more false public
6 statements that led to the lawsuit in the first place. *See Nat’l Hockey League v.*
7 *Metro Hockey Club*, 427 U.S. 639, 643 (1976) (“dismissal was appropriate in this
8 case by reason of respondents’ ‘flagrant bad faith’” in “fail[ing] to timely answer
9 written interrogatories”); *Argo Marine Systems, Inc. v. Camar Corp.*, 102 F.R.D.
10 280, 284 (S.D. N.Y. 1984) (“[I]n the face of increasing abuses of the federal
11 litigation processes, particularly in the area of discovery, Rule 37 was amended in
12 1970 and 1980 in order to make clear to litigants that attempts to evade the full-
13 disclosure directives of the discovery rules would be met with swift and firm
14 sanctions.”)

15 “Rule 37 tells all lawyers and their clients that dismissal is possible if they
16 violate discovery orders.” *Hake, M.D. v. Mass. Mutual Life Insur. Co.*, 2010 WL
17 4180923, at *5 (D. Nev. Sept. 1, 2010) (quoting *Valley Eng’rs v. Electric Eng’g*
18 *Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998)). For that reason, “it is not always
19 necessary for the court to impose less serious sanctions first or give any explicit
20 warning.” *Id.*

21 Here, of course, Mayweather was ordered to appear for deposition. He did
22 not oversleep, get ill, or miss one day of deposition. Mayweather openly defied the
23 order, repeatedly misrepresented his availability, whereabouts, and commitments,
24 and made the unilateral, self-serving decision his deposition will not proceed until
25 he was ready. As one court observed in a similar situation:

26 Th[e] advertent disregard for a Court order justifies the imposition of a
27 default judgment, in order to carry out the purposes of Rule 37.... [A]
28 party who flouts [discovery] orders does so at his peril. Issuing a
second order compelling [defendant] to submit to a deposition would

1 be of questionable value, and would not further the goal of allowing
2 this case to be decided on its merits rather than by default.

3 *In re Sumitomo Copper Litig.*, 204 F.R.D. at 60 (internal quotation omitted).

4 **D. Monetary Sanctions and Pacquiao's Attorneys' Fees Are**
5 **Appropriate.**

6 Pacquiao is also entitled to monetary sanctions, including all attorneys' fees
7 and costs incurred in connection with setting and appearing at Mayweather's Court-
8 ordered deposition, the exchange of correspondence, opposing Mayweather's
9 Emergency Motion and Emergency Appeal, and in bringing this motion. Pacquiao
10 will submit billing records to support the fees at the Court's direction.

11 **IV. CONCLUSION**

12 Default judgment is a serious sanction reserved for contumacious litigants
13 who exhibit deliberate disregard of the court's authority, engage in bad faith, or
14 undermine the integrity of the judicial process. Nothing undermines the integrity of
15 the judicial process more than a litigant like Floyd Mayweather Jr. assuming the
16 role of judge, making unilateral determinations about how a case will proceed, and
17 displaying no regard for the Court's authority.

18 Dated: August 3, 2011

19 DANIEL M. PETROCELLI
20 DAVID MARROSO
21 O'MELVENY & MYERS LLP

22 By: /s/ David Marroso
23 David Marroso
24 Attorneys for Plaintiff

25 Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 3rd day of August, 2011,
26 the foregoing was e-served pursuant to the Court's CM/ECF system.

27 /s/ David Marroso

28 David Marroso