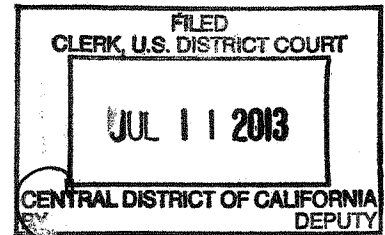


1 John Steele  
2 1111 Lincoln Road Suite 400  
3 Miami Beach, FL 33139

4 *Pro se*



5 UNITED STATES DISTRICT COURT  
6 CENTRAL DISTRICT OF CALIFORNIA

8 INGENUITY 13 LLC,  
9

10 *Plaintiff,*

11 v.

12 JOHN DOE,  
13

14 *Defendant.*

CASE NO. 2:12-CV-8333-ODW (JCx)

Judge: Hon. Otis D. Wright, II  
Magistrate Judge: Hon. Jacqueline Chooljian  
Courtroom: 11

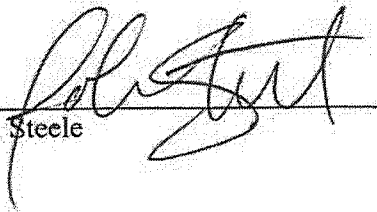
Complaint Filed: September 27, 2012  
Trial Date: None set

15 *Exhibits to BAR*  
16 COMPLAINTS AGAINST BRETT  
17 GIBBS

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that John Steele has lodged bar complaints filed against Brett  
20 Gibbs with the State Bar of California. The filings include a bar complaint filed by AF Holdings,  
21 LLC against Mr. Gibbs (Exhibit A) and a bar complaint filed by Mr. Steele against Mr. Gibbs  
(Exhibit B).

22 Dated: July 11, 2013

23 By:   
24 John Steele

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**INGENUITY 13 LLC,**  
*Plaintiff,*

v.

**JOHN DOE,**  
*Defendant.*

**CASE NO. 2:12-CV-8333-ODW (JCx)**

**Judge:** Hon. Otis D. Wright, II  
**Magistrate Judge:** Hon. Jacqueline Chooljian

**CERTIFICATE OF SERVICE**

**IT IS HEREBY CERTIFIED THAT:**

I, the undersigned, am a citizen of the United States and am at least eighteen years of age.  
My address is 1111 Lincoln Rd. Ste 400, Miami Beach, FL 33139. I have caused service of:

**EXHIBITS OF BAR COMPLAINTS AGAINST BRETT GIBBS**

On the following parties via U.S. Mail first-class, postage prepaid:

<b>PARTIES</b>	<b>COUNSEL OF RECORD/PRO SE</b>
Prenda Law, Inc. 161 N.Clark St. Ste. 3200 Chicago, IL 60601	Klinedinst PC 501 West Broadway, Suite 600 San Diego, California 92101 Telephone: (619) 239-8131 Fax: (619) 238-8707 e-mail: hrosing@klinedinstlaw.com e-mail: dmajchrzak@klinedinstlaw.com
Ingenuity 13, LLC Springates East Government Road Charlestown, Nevis	Pro Se
Livewire Holdings, LLC 2100 M Street Northwest, Suite 170-417 Washington, D.C. 20037	Pro Se
6881 Forensics, LLC Springates East Government Road Charlestown, Nevis	Pro Se
AF Holdings, LLC	Pro Se

CASE NO. 2:12-CV-8333-ODW (JCx)

1	Springates East Government Road Charlestown, Nevis	
2	Brett L. Gibbs 38 Miller Avenue, #263 Mill Valley, CA94941	Pro Se
3	Mark Lutz 2100 M Street Northwest, Suite 170-417 Washington, D.C. 20037	Pro Se
4	John Steele 1111 Lincoln Rd Ste. 400 Miami Beach, FL 33139	Pro Se
5	Paul Hansmeier Alpha Law Firm, LLC 900 IDS Center 80 South 8 <sup>th</sup> St. Minneapolis, MN 55402	Pro Se
6	Peter Hansmeier 2100 M Street Northwest, Suite 170-417 Washington, D.C. 20037	Pro Se
7	Angela Van Den Hemel 2100 M Street Northwest, Suite 170-417 Washington, D.C. 20037	Pro Se
8	Nori-Party Putative John Doe	Morgan Pietz (SBN 260629) The Pietz Law Firm 3770 Highland Ave., Ste. 206 Manhattan Beach, CA 90266
9	Morgan Pietz and Nicholas Ranallo	Heller & Edwards Lawrence E. Heller 9454 Wilshire Boulevard, Suite 500 Beverly Hills, CA 90212-2983

18 I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11,  
19 2013.

20  
21   
22 Signature

# Exhibit A

2:12-cv-8333-ODW (JCx)

Office of the Chief Trial Counsel/Intake  
The State Bar of California  
1149 South Hill Street  
Los Angeles, California 90015-2299

July 8, 2013

Dear State Bar of California:

This letter is a formal complaint against California attorney, Brett Gibbs (Bar # 251000). I would respectfully ask your office to review this complaint on an expedited basis because it involves misconduct that is not only ongoing, but is also inflicting daily harm against the interests of my company, AF Holdings, LLC. I have forwarded a copy of this complaint to Mr. Gibbs so I can see if he has any explanation for his behavior.

#### *Background*

My name is Mark Lutz and I am the manager of a company, AF Holdings, LLC, ("AF") that until July 3, 2013, was represented by Mr. Gibbs. The thrust of this complaint is that AF's attorney, Mr. Gibbs, is actively assisting AF's adversaries in exchange for his own personal financial gain.

#### *1. Mr. Gibbs is actively aiding his former client's adversaries*

On June 4, 2013, Mr. Gibbs executed a declaration that now forms the factual backbone of a sanctions motion against AF filed by attorneys Morgan Pietz and Nicholas Ranallo in a case titled, *AF Holdings, LLC v. Navasca*. (Exhibit A). Mr. Gibbs previously represented AF in the *Navasca* matter. Six days later, on June 10, 2013, Mr. Gibbs and Mr. Pietz submitted a joint stipulation that relieved Mr. Gibbs of his obligation to post security for an \$83,000 sanctions award that was entered against Gibbs in a case titled *Ingenuity13, LLC v. John Doe*. (Exhibit B). In other words, there was a *quid pro quo* between Messrs. Gibbs and Pietz: if Mr. Gibbs submitted a declaration against AF, Mr. Pietz would cut him a deal in a separate matter.

As a side note, the joint stipulation in the *Ingenuity13* matter also harmed AF by making AF responsible for Mr. Gibbs' portion of the \$83,000 bond. Mr. Gibbs neither sought nor received my approval to do this. Up until, July 3, 2013, Mr. Gibbs was representing AF in a matter titled *AF Holdings, LLC v. Magsumbol*. (Exhibit C).

In his declaration, Mr. Gibbs paints my company as a sham company that I apparently do not even run and attempts to minimize his involvement in the cases where he served (by his own admission) as my attorney. Yet, in private, Mr. Gibbs has repeatedly acknowledged my status as the manager at AF. For example, when he attempted to part ways with AF, he issued a letter to me in which he identified himself as AF's lead

counsel. (Exhibit D.) Further, when he attempted to withdraw in the *Magsumbol* matter, he sought and received a declaration from me. (Exhibit E.)

In addition to being false, these statements plainly undermine my company's (and his client's) interests and are outrageous for my attorney to make. In light of the fact that Mr. Gibbs' statements undermine AF's interests. I hope the California Bar takes action against Mr. Gibbs to protect Californians from his behavior.

2. *Mr. Gibbs stipulated to an attorneys' fees award against AF without my consent*

A week or so after Mr. Gibbs struck a deal with Messrs. Pietz and Ranallo regarding the facts discussed in #1, Mr. Gibbs submitted a statement of non-opposition to a motion for attorneys' fees filed by Mr. Ranallo in a case titled *AF Holdings, LLC v. Magsumbol*. (Exhibit F). Mr. Gibbs did not consult with me before filing this statement, did not obtain my consent and would not have been able to obtain my consent if he had tried. It is not in AF's best interests for Mr. Gibbs to consent to me paying an attorney's fee award that I did not even know about. The fact that the money is to be paid to the very attorney that Mr. Gibbs is working with (Mr. Ranallo) is also improper.

I want to be as clear as I can: until very recently I never even heard of any motion for attorneys fees being filed in the *Magsumbol* case, let alone my attorney agreeing to the fees.

3. *Mr. Gibbs represented AF in a matter where he had a serious conflict of interest, and repeatedly sabotaged AF's interests for his personal benefit*

In February, 2013, Judge Wright issued an order to show cause solely against Mr. Gibbs with respect to a case where he was representing AF. (Exhibit G) Mr. Gibbs did not inform me of this hearing. I later learned that at the hearing, Mr. Gibbs repeatedly lied to the Court, making such claims as he was "essentially a secretary" and that other attorneys that I had never spoken to about that case were AF's attorneys. (Exhibit H) As a side note, I would like to inform the California bar that Mr. Gibbs has filed and supervised hundreds of cases on behalf of AF all across the country. Mr. Gibbs was the only attorney I EVER spoke with about the case before Judge Wright. After the March 11, 2013, hearing, Judge Wright issued another order to show cause and scheduled a hearing for it on April 2, 2013. (Exhibit I) Because of Mr. Gibbs' testimony at the March 11 hearing, AF was now a defendant in the new order to show cause. In other words, my own attorney transformed an OSC against him into an OSC against my company based on complete lies to the judge.

Between the March 11, 2013, hearing and the April 2, 2013, hearing, I was never contacted by Mr. Gibbs (except to learn that I had to show up to the hearing), who was still AF's attorney on several cases, including the one in front of Judge Wright. I wish to be clear: Prior to the April 2 hearing, during the hearing, and for more than two months after the April 2nd hearing, Mr. Gibbs was still the attorney of record for

AF. Throughout this time, I believed that Mr. Gibbs was the attorney for AF Holdings and that he would defend AF's--and my own--interests in the matter before Judge Wright.

Regarding the April 2, 2013, hearing, since AF was represented by Mr. Gibbs, I assumed he was taking care of things, and that he would reach out to me when he needed to. At no time prior to the April 2nd hearing did Mr. Gibbs inform AF or me that he would not be representing AF at the hearing. I would note that I never received the order from Judge Wright and I was never told by Mr. Gibbs that AF Holdings needed to appear on April 2nd.

I was very surprised to see Mr. Gibbs appear in court on April 2nd with his own attorney. At first, I thought he had brought in additional attorneys to represent me. I later learned that he had hired attorneys to defend him in regards to his actions in this matter. I also learned, at the hearing, that Mr. Gibbs was refusing to represent AF that day. Mr. Gibbs refused to even inform that court that AF was present in compliance with the Court's order. (Exhibit J) Mr Gibbs did not even notify the Court that he represented AF when the Court instructed all the attorneys to state their name and clients to the Court. In fact, Mr. Gibbs did not utter a single word the entire hearing.

Later, I learned why Mr. Gibbs had acted so strange. I learned that Mr. Gibbs had made a deal with the opposing counsel, Mr. Pietz. The crux of the deal--as I learned through later pleadings and affidavits filed by Mr. Gibbs--was that if Mr. Gibbs agreed to file joint pleadings with Messrs. Pietz and Ranallo against AF, Mr. Pietz would stop including Mr. Gibbs in his many motions for sanctions and fees. In other words, AF's attorney Mr. Gibbs agreed to file pleadings against his own client in exchange for Mr. Gibbs getting off for writing the very pleadings that led to the OSC in the first place. And Mr. Gibbs kept his word, filing a joint motion with Mr. Pietz shortly thereafter.

As a side note, when AF filed its appeal to the Ninth Circuit, Mr. Gibbs lied to the Ninth Circuit clerk and said he didn't represent AF in the district court. The Ninth Circuit originally believed him, but when I called the clerk's office, I personally spoke to the lady who had spoken to Mr. Gibbs only one hour previous. After I requested that the Ninth Circuit check the docket sheet from the district court. After the clerks office reviewed the docket I spoke with the clerk's office again and the lady agreed that Mr. Gibbs was still AF's attorney. After that, there was a document that AF needed to file in order to prevent being sanctioned by the Ninth Circuit. Mr. Gibbs, even after I called him to ask him to file this document, flat-out refused to file the document and hung up on me. I assume this was just part of his deal with Mr. Pietz. As a non-attorney, I feel like Mr. Gibbs actions made my filing of the notice of appeal much more difficult, when it was still his job to help me.

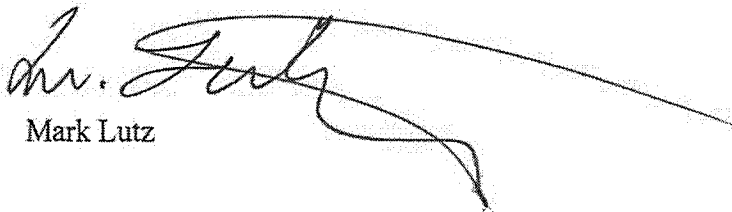
Not to belabor the point, but the record is clear that Mr. Gibbs was my attorney on the case in front of Judge Wright until May 29, 2013, when an order was entered by the Court granting Mr. Gibbs leave to withdraw. Mr. Gibbs attempted to withdraw only after the sanctions order was entered against AF. Further, Mr. Gibbs never said a word or filed a document in AF's defense during the whole order to show cause process, notwithstanding that he was AF's attorney. Nor did he attempt to withdraw before this time.

4. *Mr. Gibbs has refused to communicate with me:*

I have been unsuccessfully attempting to get some straight answers from my attorney Mr. Gibbs and he has refused to address them. I have included them below. I hope your office can get some answers on the following:

- Why didn't Mr. Gibbs raise any defense (or even talk) on AF's behalf throughout the Judge Wright order to show cause proceedings?
- Why didn't Mr. Gibbs inform AF prior to the April 2, 2013, hearing that he was going to refuse to say a single word on AF's behalf?
- Why did Mr. Gibbs agree that AF would pay Ranallo's attorney's fees in the *Magsumbol* case without even contacting AF first?
- Why did Mr. Gibbs disclose attorney-client privileged information about AF in the declaration he provided to Pietz and Ranallo?
- When was the last time Mr. Gibbs spoke with his client, AF?
- What agreements did Mr. Gibbs struck with Messrs. Pietz and Ranallo regarding AF? If Mr. Gibbs claims there is no agreement, why did Messrs. Pietz and Ranallo stop all actions against Mr. Gibbs personally at the same time that Mr. Gibbs started filing joint pleadings with opposing counsel against his own client?
- Why did Mr. Gibbs hire his own attorney for the Judge Wright order to show cause proceedings, but not advise me to do the same?
- I would like to review all correspondence between Mr. Gibbs and Mr. Pietz and/or Mr. Ranallo.
- I would like to review all correspondence between Mr. Gibbs and AF during the time he was representing AF in hundreds of cases.
- I would like to review all written correspondence between Mr. Gibbs and anyone else regarding AF during the time he was representing AF in hundreds of cases. I have already asked for this, but Mr. Gibbs has not spoken to me since I asked him for this information.

Sincerely,



Mark Lutz





# Exhibit A

Nicholas Ranallo, Attorney at Law  
SBN 275016  
371 Dogwood Way  
Boulder Creek, CA 95006  
Phone: (831) 703 -4011  
Fax: (831) 533 - 5073  
[nick@ranallolawoffice.com](mailto:nick@ranallolawoffice.com)

Attorney for Joe Navasca

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AF HOLDINGS, LLC,  
Plaintiff,

vs.

JOE NAVASCA.  
Defendant

Case No.: 3:12-cv-02396-EMC

DECLARATION OF BRETT GIBBS

1. I am an attorney duly licensed to practice in the State of California and before the District Court for the Northern District of California. This declaration is based on personal knowledge of the matters set forth herein.
2. I am formerly "Of Counsel" for Prenda Law, Inc. in California, and represented AF Holdings in that capacity in the instant matter, as well as multiple other cases throughout the state of California until approximately February, 2013.
3. As noted in my March 11, 2013, testimony before the Central District of California in the matter of Ingenuity 13 v. Doe, at all relevant times I was supervised by attorneys John Steele and Paul Hansmeier with regard to AF Holdings' litigation, including this case. John Steele and Paul Hansmeier were the attorneys who I was informed communicated with clients such as AF Holdings, and provided me with instructions and guidelines which I was informed, originated from these clients, including AF Holdings.

- 1 4. I have reviewed the Affidavit of Mark Lutz filed in this case on May 13, 2013 (Doc.  
2 #80). I believe that the information provided in the fifth paragraph of that affidavit  
3 regarding my interactions with Mr. Lutz is not an accurate description of those events. I  
4 did not "from time to time" send certificates for Mr. Lutz to sign on behalf of the Salt  
5 Marsh Trust. I did not have the alleged conversations with Mr. Lutz. In fact, I did not  
6 know that Mark Lutz was directly affiliated with these companies, as an owner or  
7 otherwise, until months after filing the ADR Certification in this case.
- 8 5. Instead, I was specifically told by Mr. Hansmeier that Salt Marsh was the owner of AF  
9 Holdings, and that he, Salt Marsh, had read and understood the ADR handbook, and that  
10 I could go ahead and file the ADR Certification with the electronic signature of Salt  
11 Marsh. Again, I never spoke with Salt Marsh directly. Through my conversation with  
12 Mr. Hansmeier, I was under the impression that the Salt Marsh was an individual who  
13 had in fact complied with the Local Rule and that his original signature existed on a  
14 document that was being held by my then-employer, Prenda Law, Inc. Given that  
15 information, I proceeded to file the ADR Certification on that basis.
- 16 6. After I filed this case, I learned through a separate case filed in Minnesota that the  
17 assignment agreement may have been invalid because there was a dispute whether a  
18 signature on the agreement was in fact forged. Once alerted to this, I immediately  
19 discussed this matter with John Steele and Paul Hansmeier. They assured me that it was  
20 a valid signature, that the allegations were mere "conspiracy theories," and that I should  
21 have no concern in continuing to prosecute this and other AF Holdings' cases. I believe I  
22 was diligent in my factual and legal investigation of this matter.

23  
24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct. This declaration is executed on this 4<sup>th</sup> day of June 2013,  
26 in Mill Valley, California.  
27  
28



# Exhibit B

1 Brett Gibbs  
2 38 Miller Avenue, #263  
3 Mill Valley, CA 94941  
4 Telephone: (415) 381-3104  
5 brett.gibbs@gmail.com  
6 *In Propria Persona*

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 INGENUITY 13 LLC,

11 *Plaintiff,*

12 v.

13 JOHN DOE,

14 *Defendant.*

CASE NO. 2:12-CV-8333-ODW (JCx)

Judge: Hon. Otis D. Wright, II  
Magistrate Judge: Hon. Jacqueline Chooljian

**STIPULATION BETWEEN  
MOVANT BRETT L. GIBBS AND  
ATTORNEY MORGAN E. PIETZ**

15  
16  
17  
18 **STIPULATION**

19 Pursuant to the Central District of California Local Rules, L.R. 7-1,  
20 Movant Brett L. Gibbs and the Putative John Doe defendant in 12-cv-  
21 8333, by and through counsel, Attorney Morgan E. Pietz (hereinafter  
22 “Stipulating Parties”), have agreed to certain terms regarding the May 6,  
23 2013 “Order Issuing Sanctions” (hereinafter “May 6 Order,” Doc. No. 130), the  
24 Court’s May 21, 2013 “Order Denying Ex Parte Application for Stay of  
25 Enforcement; Order to Show Cause Re Attorney’s Fee Award” (“May 21 Order,”  
26 Doc. No. 164), and the Court’s Order Denying in Part and Conditionally Granting in  
27

1 Part Paul Duffy's Motion for Approval of Bond and Order Staying Enforcement of  
2 May 6 and May 21 Orders Imposing Sanctions and Penalties ("June 7 Order," Doc.  
3 No. 176). After meeting and conferring in good faith on the issues  
4 currently presented in this matter, the Stipulating Parties stipulate to the  
5 following:

- 6 1. In view of a bond having been posted in the above-captioned matter,  
7 and in consideration of Mr. Gibbs' current financial difficulties as  
8 presented in his May 23, 2013 Response to the Court's May 21 Order,  
9 the Stipulating Parties agree that the entire amount of the \$1,000 per  
10 day penalty should be vacated as to Mr. Gibbs, and only as to Mr.  
11 Gibbs.
- 12 2. Mr. Gibbs' position is that because the Court's May 6 Order imposed  
13 joint and several liability for the attorney's fee award on four  
14 individuals and three entities, and the Court's June 7 Order required that  
15 the bonds clearly set forth the joint and several liability of the parties,  
16 the posted bond effectively applies to and secures payment from all of  
17 the sanctioned parties, including Mr. Gibbs. The putative John Doe  
18 defendant, through counsel, does not object to this position.
- 19 3. The Stipulating Parties agree that Mr. Gibbs should not accrue an  
20 additional sanction or penalty for failing to post the additional bond  
21 required by the Court's June 7 Order; however, if the additional bond  
22 required in the June 7 Order is not timely posted, this stipulation is  
23 without prejudice to the putative defendant's right to seek further relief  
24 as against any party, including Mr. Gibbs.

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4. As a "Prenda party," as defined in the Court's June 7 Order, Mr. Gibbs shall execute and acknowledge the validity of the conditions presented in the June 7 Order within the seven days allotted.

IT IS SO STIPULATED.

Respectfully submitted,

DATED: June 11, 2013

/s/ Brett L. Gibbs  
Brett Gibbs  
38 Miller Avenue, #263  
Mill Valley, CA 94941  
Telephone: (415) 381-3104  
brett.gibbs@gmail.com

DATED: June 10, 2013

/s/ Morgan E. Pietz  
Morgan E. Pietz  
THE PIETZ LAW FIRM  
3770 Highland Avenue, Suite 206  
Manhattan Beach, CA 90266  
Telephone: (310) 424-5557  
Facsimile: (310) 546-5301  
mpietz@pietzlawfirm.com  
*Attorney for Defendant John Doe*

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 38 Miller Avenue, Mill Valley, CA 94941. The undersigned hereby certifies that on June 11, 2013, all individuals of record who are deemed to have consented to electronic service are being served a true and correct copy of the foregoing document using the Court's ECF system, in compliance with this Court's Local Rules. Further, on June 11, 2013 a true and correct copy of the foregoing document was placed into the U.S. mail, which was delivered to the following addresses, postage paid, the list of which comprise the currently known service list of individuals with known addresses on this matter as required under the Local Rules:

Angela Van Den Hemel  
Prenda Law, Inc.  
161 N. Clark St., Suite 3200  
Chicago, IL 60601  
Email: pduffy@pduffygroup.com;  
paulduffy2005@gmail.com

John Steele  
1111 Lincoln Road, Suite 400  
Miami Beach, FL 33139  
Telephone: (708) 689-8131  
*In Propria Persona*

/s/ Brett L/ Gibbs  
Brett L. Gibbs

# Exhibit C

1 Brett L. Gibbs, Esq. (SBN 251000)  
2 38 Miller Avenue, #263  
3 Mill Valley, CA 94941  
4 415-341-5318  
5 brett.gibbs@gmail.com

6 *Attorney of Record for Plaintiff*

7 IN THE UNITED STATES DISTRICT COURT FOR THE  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

10 AF HOLDINGS, LLC,

11 Plaintiff,

12 v.

13 ANDREW MAGSUMBOL,

14 Defendant.

No. 3:12-cv-04221-SC

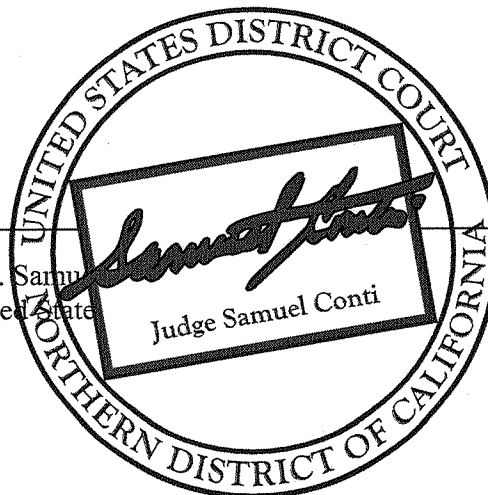
**~~PROPOSED~~ ORDER GRANTING  
ADMINISTRATIVE MOTION FOR  
RELIEF TO ALLOW ATTORNEY BRETT  
L. GIBBS WITHDRAW AS COUNSEL  
OF RECORD PURSUANT TO LOCAL  
RULES 7-11 AND 11-5**

15  
16  
17 For good cause shown, Mr. Gibbs' Administrative Motion for Relief to Allow  
18 Attorney Brett L. Gibbs to Withdraw as Counsel is hereby GRANTED, and attorney Brett L.  
19 Gibbs shall be terminated from this matter as of the date of this Order.

20 **IT IS SO ORDERED.**

21 DATED: 07/03/2013

22  
23  
24  
25 Hon. Samuel Conti  
United States District Judge



26  
27  
28

# Exhibit D

BRETT L. GIBBS, ESQ.  
ATTORNEY AT LAW

January 29, 2013

Mark L. Lutz  
Corporate Representative of AF Holdings LLC  
C/O AF Holdings LLC  
Springates East  
Government Road  
Charlestown, Nevis

Brett L. Gibbs, ESQ.  
38 Miller  
Avenue, #263  
Mill Valley  
California, 94941  
P: 415.325.5900  
blgibbs@wefightpiracy.com

Via Email and US Mail

**Re: AF Holdings Case Nos.: 12-1064, 12-1066, 12-1067, 12-1068, 12-1075, 12-1078, 12-1079, 12-2049, 12-2394, 12-2393, 12-2404, 12-2411, 12-2415, 12-1654, 12-1656, 12-1657, 12-1659, 12-1660, 12-1661, 12-1663, 12-3249, 12-1519, 12-1523, 12-1525, 12-4219, 12-4221, 12-1840, 12-2204, 12-2206, 12-2207, 12-4446, 12-4982.**

***Confirmation of Withdrawal as Counsel***

Dear Mr. Lutz:

Per our discussion this afternoon, I will be withdrawing as counsel of record in all of the above-referenced cases. Also, per our discussion, Mr. Paul Duffy will be substituting and entering his appearance as lead counsel in all of the above cases. Per our conversation, I will remain as counsel of record on Case No. 12-2396 through the Early Neutral Evaluation hearing; after which time, I will be withdrawing as counsel and substituting with Mr. Duffy.

This is letter is a confirmation of these mutually agreed upon actions. As we both agree, Mr. Paul Duffy will be sufficient in handling the above cases as lead counsel.

Sincerely,



Brett L. Gibbs, Esq.,

CC: Paul Duffy, Esq. (via email)

# Exhibit E

1 Brett L. Gibbs, Esq. (SBN 251000)  
2 38 Miller Avenue, #263  
3 Mill Valley, CA 94941  
4 415-325-5900  
5 [blgibbs@wefightpiracy.com](mailto:blgibbs@wefightpiracy.com)

6 *Attorney for Plaintiff*

7 IN THE UNITED STATES DISTRICT COURT FOR THE  
8 NORTHERN DISTRICT OF CALIFORNIA

9 AF HOLDINGS LLC,  
10 Plaintiff,  
11 v.  
12 ANDREW MAGSUMBOL,  
13 Defendant.

No. 3:12-cv-04221-SC  
DEPOSITION OF MARK LUTZ  
SUPPORTING MOTION FOR  
WITHDRAWAL OF COUNSEL

14  
15 **DECLARATION OF MARK LUTZ IN SUPPORT OF**  
16 **APPLICATION FOR EXPEDITED DISCOVERY**

17 I, Mark Lutz, declare as follows:

- 18 1. I am the CEO of AF Holdings LLC, the Plaintiff in this matter.
- 19 2. I recently discussed Mr. Brett Gibbs' intent to withdraw as counsel of this case, and  
20 we agreed that Mr. Gibbs' withdrawal would be best for Plaintiff in this suit.
- 21 3. I was told by Mr. Gibbs that AF Holdings LLC must retain California counsel within  
22 a reasonable amount of time as the LLC cannot go forward on its own without  
23 counsel. I understand this requirement and I assured Mr. Gibbs that I would be  
24 actively looking for California counsel to litigate this case in his absence.
- 25 4. I declare under penalty of perjury that the foregoing is true and correct based on my  
26 own personal knowledge, except for those matters stated on information and belief,  
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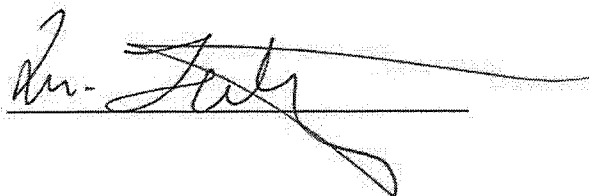


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and those matters I believe to be true. If called upon to testify, I can and will competently testify as set forth above.

**DATED: February 27, 2013**

By:



# Exhibit F

1 Brett L. Gibbs, Esq. (SBN 251000)  
38 Miller Avenue, #263  
2 Mill Valley, CA 94941  
415-341-5318  
3 [brett.gibbs@gmail.com](mailto:brett.gibbs@gmail.com)

4 *Attorney for Plaintiff*

5

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IN THE UNITED STATES DISTRICT COURT FOR THE

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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AF Holdings, LLC,

No. 3:12-cv-04221-SC

12

Plaintiff,

STATEMENT NON-OPPOSITION

v.

PURSUANT TO LOCAL RULE

13

Andrew Magsumbol,

7-3(b)

14

Defendants.

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**TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

18

**NOTICE IS HEREBY GIVEN** that pursuant to Local Rule 7-3(b), Plaintiff is not opposing

19

Defendant's Motion for Attorney's Fees (Doc. #54).

20

Respectfully Submitted,

21

**DATED: June 25, 2013**

22

By:           /s/ Brett L. Gibbs, Esq.          

23

24

Brett L. Gibbs, Esq. (SBN 251000)

25

38 Miller Avenue, #263

26

Mill Valley, CA 94941

27

[Brett.gibbs@gmail.com](mailto:Brett.gibbs@gmail.com)

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 25, 2013, all individuals of record who are deemed to have consented to electronic service are being served a true and correct copy of the foregoing document, and all attachments and related documents, using the Court's ECF system, in compliance with Local Rule 5-6 and General Order 45.

/s/ Brett L. Gibbs  
Brett L. Gibbs, Esq.

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# Exhibit G



1 U.S. 821, 831 (1994). And though this power must be exercised with restraint, the  
2 Court has wide latitude in fashioning appropriate sanctions to fit the conduct. *See*  
3 *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764–65 (1980).

4 **B. Rule 11(b)(3) Violations**

5 By presenting a pleading to the Court, an attorney certifies that—after  
6 conducting a reasonable inquiry—the factual contentions in the pleading have  
7 evidentiary support or, if specifically so identified, will likely have evidentiary  
8 support after a reasonable opportunity for further investigation or discovery. Fed. R.  
9 Civ. P. 11(b)(3). This precomplaint duty to find supporting facts is “not satisfied by  
10 rumor or hunch.” *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th  
11 Cir. 1992). The reasonableness of this inquiry is based on an objective standard, and  
12 subjective good faith provides no safe harbor. *Golden Eagle Distrib. Corp. v.*  
13 *Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986); *F.D.I.C. v. Calhoun*, 34 F.3d  
14 1291, 1296 (5th Cir. 1994); *Knipe v. Skinner*, 19 F.3d 72, 75 (2d Cir. 1994). The  
15 Court wields the discretion to impose sanctions designed to “deter repetition of the  
16 conduct or comparable conduct by others similarly situated.” Fed R. Civ. P 11(c)(4).

17 In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed  
18 Aug. 2, 2012), the Court ordered Plaintiff on December 20, 2012, to show cause why  
19 it failed to timely serve the Defendant or, if the Defendant has already been served, to  
20 submit the proof of service. (ECF No. 12.) In response, Plaintiff noted that the delay  
21 was because it waited to receive a response from the subscriber of the IP address  
22 associated with the alleged act of infringement. (ECF No. 14.) Plaintiff further noted:  
23 “Though the subscriber, David Wagar, remained silent, Plaintiff’s investigation of his  
24 household established that Benjamin Wagar was the likely infringer of Plaintiff’s  
25 copyright.” (ECF No. 14, at 2.) Based on this investigation, Plaintiff filed an  
26 Amended Complaint, substituting Benjamin Wagar for John Doe. (ECF No. 13.)

27 Plaintiff’s Amended Complaint alleges the following in connection with  
28 Benjamin Wagar:

- 1 • “Defendant Benjamin Wagar (‘Defendant’) knowingly and illegally  
2 reproduced and distributed Plaintiff’s copyrighted Video by acting in  
3 concert with others via the BitTorrent file sharing protocol and, upon  
4 information and belief, continues to do the same.” (AC ¶ 1);
- 5 • “Defendant is an individual who, upon information and belief, is over the  
6 age of eighteen and resides in this District.” (AC ¶ 4);
- 7 • “Defendant was assigned the Internet Protocol (‘IP’) address of  
8 96.248.225.171 on 2012-06-28 at 07:19:47 (UTC).” (AC ¶ 4);
- 9 • “Defendant, using IP address 96.248.225.171, without Plaintiff’s  
10 authorization or license, intentionally downloaded a torrent file particular  
11 to Plaintiff’s Video, purposefully loaded that torrent file into his  
12 BitTorrent client—in this case, Azureus 4.7.0.2—entered a BitTorrent  
13 swarm particular to Plaintiff’s Video, and reproduced and distributed the  
14 Video to numerous third parties.” (AC ¶ 22);
- 15 • “Plaintiff’s investigators detected Defendant’s illegal download on 2012-  
16 06-28 at 07:19:47 (UTC). However, this is a [*sic*] simply a snapshot  
17 observation of when the IP address was *observed* in the BitTorrent  
18 swarm; the conduct took itself [*sic*] place before and after this date and  
19 time.” (AC ¶ 23);
- 20 • “The unique hash value in this case is identified as  
21 F016490BD8E60E184EC5B7052CEB1FA570A4AF11.” (AC ¶ 24.)

22 In a different case, *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx)  
23 (C.D. Cal. filed Aug. 2, 2012), Plaintiff essentially makes the same response to the  
24 Court’s December 20, 2012 Order To Show Cause (ECF No. 12): “Though the  
25 subscriber, Marvin Denton, remained silent, Plaintiff’s investigation of his household  
26 established that Mayon Denton was the likely infringer of Plaintiff’s copyright.”  
27 (ECF No. 13, at 2.) And based on this information, Plaintiff filed an Amended  
28 Complaint (ECF No. 16), similar in all respects to the one filed against Benjamin



1 Wagar in *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed  
2 Aug. 2, 2012), with the following technical exceptions:

- 3 • “Defendant was assigned the Internet Protocol (‘IP’) address of 75.128.55.44  
4 on 2012-07-04 at 07:51:30 (UTC).” (AC ¶ 4);
- 5 • “Defendant . . . purposefully loaded that torrent file into his BitTorrent  
6 client—in this case, µTorrent 3.1.3 . . . .” (AC ¶ 22);
- 7 • “The unique hash value in this case is identified as  
8 0D47A7A035591B0BA4FA5CB86AFE986885F5E18E.” (AC ¶ 24.)

9 Upon review of these allegations, the Court finds two glaring problems that  
10 Plaintiff’s technical cloak fails to mask. Both of these are obvious to an objective  
11 observer having a working understanding of the underlying technology.

12 *1. Lack of reasonable investigation of copyright infringement activity*

13 The first problem is how Plaintiff concluded that the Defendants actually  
14 downloaded the entire copyrighted video, when all Plaintiff has as evidence is a  
15 “snapshot observation.” (AC ¶ 23.) This snapshot allegedly shows that the  
16 Defendants were downloading the copyrighted work—at least at that moment in time.  
17 But downloading a large file like a video takes time; and depending on a user’s  
18 Internet-connection speed, it may take a long time. In fact, it may take so long that the  
19 user may have terminated the download. The user may have also terminated the  
20 download for other reasons. To allege copyright infringement based on an IP  
21 snapshot is akin to alleging theft based on a single surveillance camera shot: a photo  
22 of a child reaching for candy from a display does not automatically mean he stole it.  
23 No Court would allow a lawsuit to be filed based on that amount of evidence.

24 What is more, downloading data via the Bittorrent protocol is not like stealing  
25 candy. Stealing a piece of a chocolate bar, however small, is still theft; but copying an  
26 encrypted, unusable piece of a video file via the Bittorrent protocol may not be  
27 copyright infringement. In the former case, some chocolate was taken; in the latter  
28 case, an encrypted, unusable chunk of zeroes and ones. And as part of its prima facie

1 copyright claim, Plaintiff must show that Defendants copied the copyrighted work.  
2 *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). If a download  
3 was not completed, Plaintiff's lawsuit may be deemed frivolous.

4 In this case, Plaintiff's reliance on snapshot evidence to establish its copyright  
5 infringement claims is misplaced. A reasonable investigation should include evidence  
6 showing that Defendants downloaded the entire copyrighted work—or at least a  
7 usable portion of a copyrighted work. Plaintiff has none of this—no evidence that  
8 Defendants completed their download, and no evidence that what they downloaded is  
9 a substantially similar copy of the copyrighted work. Thus, Plaintiff's attorney  
10 violated Rule 11(b)(3) for filing a pleading that lacks factual foundation.

11 2. *Lack of reasonable investigation of actual infringer's identity*

12 The second problem is more troublesome. Here, Plaintiff concluded that  
13 Benjamin Wagar is the person who illegally downloaded the copyrighted video. But  
14 Plaintiff fails to allege facts in the Amended Complaint to show how Benjamin Wagar  
15 is the infringer, other than noting his IP address, the name of his Bittorrent client, and  
16 the alleged time of download.<sup>2</sup> Plaintiff's December 27, 2012 Response to the Court's  
17 Order to Show Cause re Lack of Service sheds some light:

18 Though the subscriber, David Wagar, remained silent, Plaintiff's  
19 investigation of his household established that Benjamin Wagar was the  
20 likely infringer of Plaintiff's copyright. As such, Plaintiff mailed its  
21 Amended Complaint to the Court naming Benjamin Wagar as the  
22 Defendant in this action. (ECF No. 14, at 2.)

23 The disconnect is how Plaintiff arrived at this conclusion—that the actual infringer is  
24 a member of the subscriber's household (and not the subscriber himself or anyone  
25 else)—when all it had was an IP address, the name of the Bittorrent client used, the  
26 alleged time of download, and an unresponsive subscriber.

27 <sup>2</sup> This analysis similarly applies in *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D.  
28 Cal. filed Aug. 2, 2012), where Plaintiff fails to allege sufficient facts to show how Mayon Denton is  
the infringer.

1 Plaintiff's December 27, 2012 Discovery Status Report gives additional insight  
2 into Plaintiff's deductive process:

3 In cases where the subscriber remains silent, Plaintiff conducts  
4 investigations to determine the likelihood that the subscriber, or someone  
5 in his or her household, was the actual infringer. . . . For example, if the  
6 subscriber is 75 years old, or the subscriber is female, it is statistically  
7 quite unlikely that the subscriber was the infringer. In such cases,  
8 Plaintiff performs an investigation into the subscriber's household to  
9 determine if there is a likely infringer of Plaintiff's copyright. . . .  
Plaintiff bases its choices regarding whom to name as the infringer on  
factual analysis. (ECF No. 15, at 24.)

10 The Court interprets this to mean: if the subscriber is 75 years old or female, then  
11 Plaintiff looks to see if there is a pubescent male in the house; and if so, he is named  
12 as the defendant. Plaintiff's "factual analysis" cannot be characterized as anything  
13 more than a hunch.

14 Other than invoking undocumented statistics, Plaintiff provides nothing to  
15 indicate that Benjamin Wagar is the infringer. While it is plausible that Benjamin  
16 Wagar is the infringer, Plaintiff's deduction falls short of the reasonableness standard  
17 required by Rule 11.

18 For instance, Plaintiff cannot show that Benjamin is the infringer instead of  
19 someone else, such as: David Wagar; other members of the household; family guests;  
20 or, the next door neighbor who may be leeching from the Wagars' Internet access.  
21 Thus, Plaintiff acted recklessly by naming Benjamin Wagar as the infringer based on  
22 its haphazard and incomplete investigation.

23 Further, the Court is not convinced that there is no solution to the problem of  
24 identifying the actual infringer. Here, since Plaintiff has the identity of the subscriber,  
25 Plaintiff can find the subscriber's home address and determine (by driving up and  
26 scanning the airwaves) whether the subscriber, (1) has Wi-Fi, and (2) has password-  
27 protected his Wi-Fi access, thereby reducing the likelihood that an unauthorized user  
28 outside the subscriber's home is the infringer. In addition, since Plaintiff is tracking a

1 number of related copyrighted videos, Plaintiff can compile its tracking data to  
2 determine whether other copyrighted videos were downloaded under the same IP  
3 address. This may suggest that the infringer is likely a resident of the subscriber's  
4 home and not a guest. And an old-fashioned stakeout may be in order: the presence of  
5 persons within the subscriber's home may be correlated with tracking data—the  
6 determination of who would have been in the subscriber's home when the download  
7 was initiated may assist in discovering the actual infringer.

8       Such an investigation may not be perfect, but it narrows down the possible  
9 infringers and is better than the Plaintiff's current investigation, which the Court finds  
10 involves nothing more than blindly picking a male resident from a subscriber's home.  
11 But this type of investigation requires time and effort, something that would destroy  
12 Plaintiff's business model.

13       The Court has previously expressed concern that in pornographic copyright  
14 infringement lawsuits like these, the economics of the situation makes it highly likely  
15 for the accused to immediately pay a settlement demand. Even for the innocent, a  
16 four-digit settlement makes economic sense over fighting the lawsuit in court—not to  
17 mention the benefits of preventing public disclosure (by being named in a lawsuit) of  
18 allegedly downloading pornographic videos.

19       And copyright lawsuits brought by private parties for damages are different  
20 than criminal investigations of cybercrimes, which sometimes require identification of  
21 an individual through an IP address. In these criminal investigations, a court has some  
22 guarantee from law enforcement that they will bring a case only when they actually  
23 have a case and have confidently identified a suspect. In civil lawsuits, no such  
24 guarantees are given. So, when viewed with a court's duty to serve the public interest,  
25 a plaintiff cannot be given free rein to sue anyone they wish—the plaintiff has to  
26 actually show facts supporting its allegations.

27 ///

28 ///

1 **C. Local Rule 83-3 Violations**

2 Under Local Rule 83-3, the Court possesses the power to sanction attorney  
3 misconduct, including: disposing of the matter; referring the matter to the Standing  
4 Committee on Discipline; or taking “any action the Court deems appropriate.”  
5 L.R. 83-3.1. This includes the power to fine and imprison for contempt of the Court’s  
6 authority, for: (1) misbehavior of any person in its presence or so near thereto as to  
7 obstruct the administration of justice; (2) misbehavior of any of its officers in their  
8 official transactions; or, (3) disobedience or resistance to its lawful writ, process,  
9 order, rule, decree, or command. 18 U.S.C. § 401.

10 The Court is concerned with three instances of attorney misconduct. The first  
11 and second instances are related and concern violating the Court’s discovery order.  
12 The third instance concerns possible fraud upon the Court.

13 *1. Failure to comply with the Court’s discovery order*

14 In *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal. filed  
15 Aug. 1, 2012) and *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal.  
16 filed Aug. 2, 2012), the Court ordered Plaintiff to “cease its discovery efforts relating  
17 to or based on information obtained through any abovementioned Rule 45  
18 subpoenas.” (ECF No. 13, at 1; ECF No. 10, at 1.) Further, Plaintiff was required to  
19 name all persons that were identified through any Rule 45 subpoenas. (*Id.*)

20 Plaintiff responded on November 1, 2012, and indicated that it did not obtain  
21 any information about the subscribers in both of these cases. (ECF No. 10, at 6–7,  
22 10.)<sup>3</sup> But in response to the Court’s subsequent Orders to Show Cause, Plaintiff not  
23 only named the subscribers, but recounted its efforts to contact the subscriber and find  
24 additional information. (ECF No. 15; ECF No. 18.)

25 This conduct contravenes the Court’s order to cease discovery. Plaintiff has  
26 provided no justification why it ignored the Court’s order.

27 <sup>3</sup> This response was filed in *AF Holdings LLC v. Doe*, No. 2:12-cv-5709-ODW(JCx) (C.D. Cal. filed  
28 July 2, 2012).

1           2.     *Fraud on the Court*

2           Upon review of papers filed by attorney Morgan E. Pietz, the Court perceives  
3 that Plaintiff may have defrauded the Court. (ECF No. 23.)<sup>4</sup> At the center of this  
4 issue is the identity of a person named Alan Cooper and the validity of the underlying  
5 copyright assignments.<sup>5</sup> If it is true that Alan Cooper's identity was misappropriated  
6 and the underlying copyright assignments were improperly executed using his  
7 identity, then Plaintiff faces a few problems.

8           First, with an invalid assignment, Plaintiff has no standing in these cases.  
9 Second, by bringing these cases, Plaintiff's conduct can be considered vexatious, as  
10 these cases were filed for a facially improper purpose. And third, the Court will not  
11 idle while Plaintiff defrauds this institution.

12     **D.    Conclusion**

13           Accordingly, the Court hereby **ORDERS** Brett L. Gibbs, **TO SHOW CAUSE**  
14 why he should not be sanctioned for the following:

- 15           • In *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal.  
16           filed Aug. 1, 2012), violating the Court's October 19, 2012 Order  
17           instructing AF Holdings to cease its discovery efforts based on  
18           information obtained through any earlier-issued subpoenas;
- 19           • In *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal.  
20           filed Aug. 2, 2012), violating the Court's October 19, 2012 Order  
21           instructing AF Holdings to cease its discovery efforts based on  
22           information obtained through any earlier-issued subpoenas;

23     ///

24  
25     <sup>4</sup> Although the papers revealing this possible fraud were filed in *Ingenuity 13 LLC v. Doe*, No. 2:12-  
26     cv-8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012), this fraud, if true, was likely committed by  
27     Plaintiff in each of its cases before this Court.

28     <sup>5</sup> For example, in *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2,  
2012), Plaintiff filed a copyright assignment signed by Alan Cooper on behalf of Plaintiffs. (ECF  
No. 16-1.)

- 1           • In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal.  
2           filed Aug. 2, 2012), violating Rule 11(b)(2) by:
- 3                 ○ alleging copyright infringement based on a snapshot of Internet  
4                 activity, without conducting a reasonable inquiry; or,  
5                 ○ alleging that Benjamin Wagar is the infringer, without conducting  
6                 a reasonable inquiry;
- 7           • In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal.  
8           filed Aug. 2, 2012), violating Rule 11(b)(2) by:
- 9                 ○ alleging copyright infringement based on a snapshot of Internet  
10                activity, without conducting a reasonable inquiry; or,  
11                ○ alleging that Mayon Denton is the infringer, without conducting a  
12                reasonable inquiry;
- 13          • In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal.  
14          filed Sept. 27, 2012), perpetrating fraud on the Court by  
15          misappropriating the identity of Alan Cooper and filing lawsuits based  
16          on an invalid copyright assignment.

17           This order to show cause is scheduled for hearing on March 11, 2013, at 1:30  
18 p.m., to provide Mr. Gibbs the opportunity to justify his conduct. Based on the  
19 unusual circumstances of this case, the Court invites Morgan E. Pietz to present  
20 evidence concerning the conduct outlined in this order. The Court declines to sanction  
21 Plaintiffs AF Holdings LLC and Ingenuity 13 LLC at this time for two reasons:  
22 (1) Mr. Gibbs appears to be closely related to or have a fiduciary interest in Plaintiffs;  
23 and; (2) it is likely Plaintiffs are devoid of assets.

24           If Mr. Gibbs or Mr. Pietz so desire, they each may file by February 19, 2013, a  
25 brief discussing this matter. The Court will also welcome the appearance of Alan  
26 Cooper—to either confirm or refute the fraud allegations.

27           Based on the evidence presented at the March 11, 2013 hearing, the Court will  
28 consider whether sanctions are appropriate, and if so, determine the proper

1 punishment. This may include a monetary fine, incarceration, or other sanctions  
2 sufficient to deter future misconduct. Failure by Mr. Gibbs to appear will result in the  
3 automatic imposition of sanctions along with the immediate issuance of a bench  
4 warrant for contempt.

5 **IT IS SO ORDERED.**

6 February 7, 2012

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10 **OTIS D. WRIGHT, II**  
11 **UNITED STATES DISTRICT JUDGE**  
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# Exhibit I

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

INGENUITY 13 LLC,  
  
Plaintiff,  
  
v.  
  
JOHN DOE,  
  
Defendant.

Case Nos. 2:12-cv-8333-ODW(JCx)  
**ORDER**

The Court has received the Ex Parte Application filed on behalf of John Steele, Paul Hansmeier, Paul Duffy, and Angela Van Den Hemel, requesting the Court to withdraw its March 5, 2013 Order requiring their attendance on March 11, 2013.

Based on the papers filed and the evidence presented during the March 11, 2013 hearing, the Court concludes there is at least specific jurisdiction over these persons because of their pecuniary interest and active, albeit clandestine participation in these cases. Not only does the Ex Parte Application lack merit, its eleventh-hour filing exemplifies gamesmanship. Accordingly, the Ex Parte Application is **DENIED**.

The March 11, 2013 hearing raised questions concerning acts performed by other persons related to Prenda Law, Inc., Steele Hansmeier PLLC, Livewire Holdings LLC, AF Holdings LLC, Ingenuity 13 LLC, and 6881 Forensics, LLC. The evidence presented suggests these persons may be culpable for the sanctionable conduct explained in the Court's February 7, 2013 Order to Show Cause, which the Court previously attributed to Brett Gibbs only. Further, it appears that these persons, and

1 their related entities, may have defrauded the Court through their acts and  
2 representations in these cases.

3 Thus, the Court amends its February 7, 2013 Order to Show Cause (ECF  
4 No. 48) to include sanctions against the persons and entities in subparagraphs a–m  
5 below:

- 6 a) John Steele, of Steele Hansmeier PLLC, Prenda Law, Inc., and/or  
7 Livewire Holdings LLC;
- 8 b) Paul Hansmeier, of Steele Hansmeier PLLC and/or Livewire Holdings  
9 LLC;
- 10 c) Paul Duffy, of Prenda Law, Inc.;
- 11 d) Angela Van Den Hemel, of Prenda Law, Inc.;
- 12 e) Mark Lutz, of Prenda Law, Inc., AF Holdings LLC and/or Ingenuity  
13 13 LLC;
- 14 f) Alan Cooper, of AF Holdings LLC;
- 15 g) Peter Hansmeier, of 6881 Forensics, LLC;
- 16 h) Prenda Law, Inc.;
- 17 i) Livewire Holdings LLC;
- 18 j) Steele Hansmeier PLLC;
- 19 k) AF Holdings LLC;
- 20 l) Ingenuity 13 LLC; and
- 21 m) 6881 Forensics, LLC.

22 These persons and entities are **ORDERED** to appear on March 29, 2013, at  
23 10:30 a.m., **TO SHOW CAUSE** for the following:

- 24 1) Why they should not be sanctioned for their participation, direction,  
25 and execution of the acts described in the Court’s February 7, 2013  
26 Order to Show Cause;
- 27 2) Why they should not be sanctioned for failing to notify the Court of  
28 all parties that have a financial interest in the outcome of litigation;

- 1           3) Why they should not be sanctioned for defrauding the Court by  
2           misrepresenting the nature and relationship of the individuals and  
3           entities in subparagraphs a–m above;  
4           4) Why John Steele and Paul Hansmeier should not be sanctioned for  
5           failing to make a *pro hac vice* appearance before the Court, given  
6           their involvement as “senior attorneys” in the cases; and  
7           5) Why the individuals in subparagraphs a–g above should not be  
8           sanctioned for contravening the Court’s March 5, 2013 Order (ECF  
9           No. 66) and failing to appear on March 11, 2013.

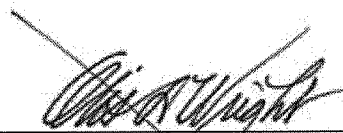
10           Gibbs is **ORDERED** to serve a copy of this order on the persons and entities in  
11           subparagraphs a–m above by March 15, 2013, and must file proofs of service with the  
12           Court by March 18, 2013. Gibbs is further **ORDERED** to appear on March 29, 2013,  
13           at 10:30 a.m.

14           No other parties are required to appear on March 29, 2013. If so desired,  
15           Morgan E. Pietz and Nicholas R. Ranallo may appear on behalf of Defendant Doe.

16           Should the persons and entities in subparagraphs a–m above not appear on  
17           March 29, 2013, the Court is prepared to draw reasonable inferences concerning their  
18           conduct in the cases before the Court, including any inferences derived from their  
19           failure to appear. Failure to comply with this order will result in the imposition of  
20           sanctions.

21           **IT IS SO ORDERED.**

22           March 14, 2013



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23  
24           **OTIS D. WRIGHT, II**  
25           **UNITED STATES DISTRICT JUDGE**  
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27  
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# Exhibit B

2:12-cv-8333-ODW (JCx)

Office of the Chief Trial Counsel/Intake  
The State Bar of California  
1149 South Hill Street  
Los Angeles, California 90015

Dear Sirs,

My name is John Steele and I am filing this bar complaint against a California attorney named Brett Gibbs ("Attorney Gibbs"). I understand his bar number to be 251000. I am an attorney myself and am licensed solely in the state of Illinois. This is the first bar complaint I have ever filed, and I do not take this action lightly.

### Background

Attorney Gibbs was a senior attorney at a law firm named Prenda Law, Inc. ("Prenda") until sometime earlier this year. Attorney Gibbs represented a number of Prenda's clients, including AF Holdings LLC ("AFH") and Ingenuity 13 LLC ("I13"). I have attached an affidavit from the manager of those two entities, Mark Lutz, who was the person in charge of both AFH and I13 (Exhibit A). That affidavit makes clear that Attorney Gibbs was the only attorney for AFH and I13 throughout the entire state of California during the relevant time period. It is my understanding that Attorney Gibbs directly handled hundreds of cases in California and supervised hundreds of cases outside of California that were handled by local counsels. I have attached an email AFH sent to me showing Attorney Gibbs directing local counsel in Georgia. (Exhibit B).

Apparently, in several cases, Attorney Gibbs filed pleadings that were patently hostile to the sitting judge in the matter, most notably Judge Otis T. Wright, II of the U.S. District Court for the Central District of California (case 2:12-cv-8333-SVW(PJWx)). On February 7, 2013, Judge Wright issued an Order to Show Cause against Attorney Gibbs for his conduct in that matter (Exhibit C).

### Relevant facts regarding my involvement

- I have never represented any individual or company in any case in the State of California in my entire life. I have never filed a single pleading, memorandum, or other document with any court in the State of California prior to March 2013 (a search on ECF will confirm this). I have never appeared in any court in California prior to April 2013. To the best of my recollection, I have not even stepped foot in the state of California as an adult, except for two days in 2012 (vacation) and two days in April 2013 (discussed below).
- I have never filed a *pro hac vice* application to appear in a California case. In my entire legal career, I have appeared a total of two times outside the state of Illinois. Once in Minnesota, Case 27-CV-12-17079, and once in Washington DC, Case 12-0048 (BAH).

- I have never had an ownership interest in Prenda Law Inc. I have attached a screenshot from the Illinois Secretary of State (Exhibit D) and an affidavit from the actual owner of Prenda (Exhibit E). I do not have an ownership interest in any other law firm. I live in Florida, where I am not licensed to practice law and do not practice law. I do not have any law clients, a law firm website, a law firm phone number, a trust account, or any other indices of practicing law.
- I have never had an ownership interest in AF Holdings LLC or Ingenuity 13, and have attached an affidavit from the actual person who controls both entities attesting to that fact (Exhibit A).
- I want to make it clear that I never read, prepared, reviewed, modified, discussed, or was in any way involved with the pleadings filed by Attorney Gibbs in the Judge Wright matter. My first knowledge of the case was when a third party told me sometime in February 2013 that Attorney Gibbs was in trouble for insulting a judge in California.

#### March 11, 2013, Hearing

I was stunned upon reading the transcript of the March OSC hearing ("Exhibit F"). Attorney Gibbs told Judge Wright that me and a Minnesota attorney named Paul Hansmeier supervised him in all of his cases and that he was essentially a "secretary" for Mr. Hansmeier and myself. This is a complete and unequivocal lie. There is no other way to describe it. At the time Attorney Gibbs lied to Judge Wright, I had absolutely no relationship to that case. Also, the court docket is clear that Attorney Gibbs was the only counsel for AFH and I13 in the case before Judge Wright. Attorney Gibbs was the only person to sign pleadings in the case or appear at hearings in front of Judge Wright regarding AFH from the beginning of the case until it was dismissed. Furthermore, AF Holdings, through its manager, makes it clear that it only had one attorney and that his name was Brett Gibbs. But the most damning evidence as to Attorney Gibbs' true role is his own words. I have attached a few emails that Attorney Gibbs sent to various attorneys he supervised:

- "Please note that my information is everywhere that it can legally be. This is because we are trying to drive all of the phone calls to me, so we don't have to burden local counsel with settlement discussions" (May 19, 2012 email to Minnesota counsel)
- "Attached are .pdf documents for a new case to file in Illinois, Western District. . . All you will need to do is draft the civil cover sheet, and file these. . . (Email to Paul Duffy instructing him to file a complaint, corporate disclosure documents and other papers Attorney Gibbs had prepared.)
- "I talked with the Unauthorized Practice of Law Department in Florida. . . I can still participate in these cases if I have reasonable expectation of being allowed to be admitted in pro-hac if I were to apply . . . feel

free to tell Syfert to contact me for settlement negotiations on the [redacted] and [redacted] clients. (Email to a Florida local counsel on August 28, 2012)

- "While we are drafting the Responses, we need to make sure you are available tomorrow to file them." (Email to Florida local counsel).
- "Good sign . . . educating the judicial system, one judge at a time. Though, how arrogant is this judge? "No, your honor, we are not the idiots here . . . it is clearly you and your staff without with [sic] requisite mental facilities" (October 25, 2012 email). (Exhibit G)

I would submit that when I actually did practice law, none of my secretaries made comments like those of Attorney Gibbs.

In addition, the attached affidavit from Jacques Nazaire makes clear that Attorney Gibbs was his supervising attorney. Attorney Nazaire stated, "On the occasion when I needed to speak with a representative for AF Holdings, LLC, my point of contact was Brett Gibbs, who I understood to be the lead counsel for all the AF Holdings cases nationwide." He further stated, "I have spoken infrequently to Mr. John Steele over the past years."

As of the filing of this complaint, I have been able to reach out to three other attorneys who were also counsels of record for AF Holdings and Ingenuity 13 in various states. Based on their statements to me, I believe they would corroborate Attorney Nazaire's affidavit. I would certainly provide additional information on this issue if your office desires.

#### April 2, 2013 Hearing

Based on Attorney Gibbs' perjury to Judge Wright, the court issued an OSC against me and other people that also had nothing to do with this case. I was ordered to appear in front of Judge Wright on April 2, 2013. Obviously, as an officer of the court, I complied with the Judge's order and flew to L.A at great personal expense. Since I had absolutely no idea what the case was about, and based on advice of counsel, I invoked my 5th Amendment right not to testify. Although this may seem strange, I simply had no idea of what was going on in the case. As I stated earlier, prior to preparing for my April 2, 2013 appearance in front of Judge Wright, I had not read a single document in the case.

The OSC hearing involving me, Paul Hansmeier, AFH, 113, Prenda Law, Paul Duffy, and two paralegals lasted a total of 12 minutes and no evidence whatsoever was submitted. No testimony was taken, and no witnesses were sworn in. I have attached the transcript (Exhibit H). On May 6, 2013 Judge Wright issued an order based solely on Attorney Gibbs perjurious statements made at the March hearing that I did not attend (Exhibit I). I appealed the sanctions order to the Ninth Circuit for the reasons stated above (Exhibit J).



To the best of my knowledge, there has never been any evidence introduced in any court in this country to show I had any ownership interest in Prenda, AFH, or I13. That is because I do not have, and have never had, any ownership interest in any of those entities. Attorney Gibbs knows I have no involvement in his case in front of Judge Wright. He is simply trying to escape responsibility for his own inappropriate behavior in cases throughout the state of California.

#### **Further misconduct by Attorney Gibbs**

To add insult to injury, Attorney Gibbs, failed to timely send me the pleadings he filed in the Judge Wright case after April 2, 2013, as required by local rules. Attorney Gibbs is licensed in the U.S. District for the Central District of California. According to L.R. 5-3.1.1:

*Documents presented to the Clerk for filing or lodging in paper format pursuant to L.R. 5-4.2 must be served in accordance with F.R.Civ.P. 5. All documents served under this L.R. 5-3.1.1 must be accompanied by a proof of service in the form required. L.R. 5-3.1.2. (Emphasis added).*

F.R.Civ.P 5 makes it clear that Attorney Gibbs was required to serve me with the pleadings he filed with the court According to the U.S. District for the Central District of California's application for admission, prior to being admitted:

*"Applicants must certify that they are familiar with this Court's Local Civil and Criminal Rules, and with the Federal Rules of Civil Procedure, Criminal Procedure, and Evidence. (Emphasis added) (Exhibit I).*

I am appearing *pro se* in the Judge Wright matter and do not have an ECF account. Further, I have not consented to any alternative forms of service.

Attorney Gibbs failure to serve me (and other *pro se* parties in the Judge Wright case) was not an accident or a one time mistake. He never timely served me with any of his filings. And there is a very good reason for why he purposely violated L.R. 5-3.1.1 and F.R.Civ.P 5: He knew if I had an opportunity to object to his pleadings, he would have had a more difficult time lying to Judge Wright. Attorney Gibbs, who now works with the opposing counsel in the case against his own client AFH, obtained leave from an *ex parte* order from Judge Wright ordering me (and others) to pay an additional \$135,000 bond if I want to continue appealing the April order. (Exhibit J). I would note that I finally received all the pleadings in the case in a package postmarked July 2, 2013, 9 days ago. I still have the physical package with the postmark on it.

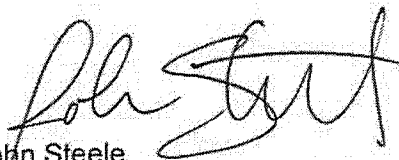
### Conclusion

Attorney Gibbs acted inappropriately in a case in front of Judge Wright and filed pleadings that insulted the court. When he was forced to answer for his misconduct, he lied and blamed others who had no relation to the case. Then to avoid having to pay the sanctions award in that case, he teamed up with the opposing counsels (Mr. Pietz and Mr. Ranallo) to file joint pleadings with them against his own client and others such as myself who have nothing to do with Mr. Gibbs' conduct in California.

I am fully prepared to submit an affidavit regarding the above claims, or provide any additional information your office requests of me regarding this matter. I have already expended countless hours defending myself from the repercussions of Attorney Gibbs outrageous lies. As your office can see from Judge Wright's order of May 6, 2013, the court referred me to the IRS CID, the US Attorney's office, the Illinois State Bar, and the Central District of California for investigation. I am not worried about these investigations, as I did nothing wrong. But the very fact that I face disbarment from the Central District of California when I have never even applied for admission is surreal. Attorney Gibbs' false statements, which he cannot substantiate with any evidence whatsoever, have ruined my reputation and caused me a great deal of harm. I was forced to contribute to a \$100,000 bond in order to appeal the sanctions order entered by Judge Wright.

I believe that once your office begins an investigation into the allegations raised in this complaint, it will be very disturbed by what Attorney Gibbs has done not only to me and other attorneys, but to his own current (and former) clients. What really frustrates me about Attorney Gibbs behavior was that he hurt more than just the attorneys like myself who had nothing to do with his case. He also inflicted large financial burdens and difficulties on low-level paralegals and administrative staff when he lied to Judge Wright and claimed that they were also responsible for his own unethical behavior.

Finally, I would ask the attorney reviewing this matter to imagine yourself sitting in your home, three time zones away from a case you had never heard of in front of a judge you had never heard of in a state where you had never practiced law. All of a sudden, you are ordered to appear to discuss a case you have no relation to. Then you have to post a combined \$235,000 bond to appeal the resulting sanctions order. And there is no actual evidence against you. Nothing but self-serving testimony from an ethically challenged California attorney looking to escape his conduct.

  
John Steele  
1111 Lincoln Road Suite 400  
Miami Beach, FL 33139  
(708) 689-8131

# Exhibit A

**AFFIDAVIT OF MARK LUTZ**

I, Mark Lutz, declare under penalty of perjury as true and correct:

1. I am over eighteen years of age and am competent to testify as to the matters set forth herein.
2. I am the manager of both AF Holdings LLC ("AF") and Ingenuity13 LLC ("Ingenuity").
3. I have never met or heard of anyone named Salt Marsh. No individual by that name has ever been involved with AF or Ingenuity.
4. Neither John Steele, Paul Hansmeier, or Paul Duffy, has ever had any ownership interest in, or control whatsoever of AF or Ingenuity.
5. I filed a bar complaint against Brett Gibbs on July 10, 2013 due to his misconduct regarding his representation of AF Holdings LLC in hundreds of cases across the country, including case number 2:12-cv-08333-ODW-JC in front of Judge Wright.
6. Brett Gibbs is the only attorney that AF or Ingenuity ever retained to perform legal work related to case 2:12-cv-08333-ODW-JC in front of Judge Wright. Mr. Gibbs was the only attorney that discussed that case with me. John Steele has never represented Ingenuity or AF in any case in any case in the state of California.
7. I have read the bar complaint being filed by John Steele against Mr. Gibbs and have no objections to the information about me, AF, or Ingenuity 13 that is being used in that complaint. In fact, most of the facts in his complaint I am personally aware of and believe happened as described in Mr. Steele's complaint against Mr. Gibbs.


  
Mark Lutz

7/10/13  
Date

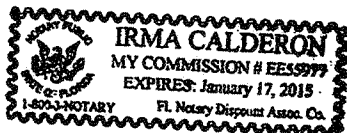
State of Florida

County of Miami Dade

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2013 by Mark Lutz who has produced a Florida Driver License as identification.

  
Notary Signature

IRMA CALDERON  
Name



# Exhibit B

> From: Jacques Nazaire <nazaire.jacques@gmail.com>  
> Date: Fri, Jan 18, 2013 at 12:43 PM  
> Subject: Re: Letters to Send Out ASAP  
> To: Brett Gibbs <blgibbs@wefightpiracy.com>  
>  
>  
> Here it is. Let me know if you need anything else. Thanks.  
>  
>  
> -Jacques  
>  
> On Fri, Jan 18, 2013 at 1:24 PM, Brett Gibbs <blgibbs@wefightpiracy.com> wrote:  
>  
>> Jacques:  
>>  
>> Yes, we can email you a copy of each letter that we plan to send out prior  
>> to sending. We will send you a copy of all of the letters we intend to  
>> send out (in bulk) and then check to see if you have any issue in sending  
>> those out. If you do not respond that you have any issues, we will send  
>> those out the next day.  
>>  
>> ALSO -- we have a hacker version of the letter (attached) that we would  
>> like to send out. Please review/edit and send back your approved version  
>> of that as well.  
>>  
>> Thanks,  
>>  
>> Brett  
>>  
>>  
>> On Fri, Jan 18, 2013 at 9:53 AM, Jacques Nazaire <  
>> nazaire.jacques@gmail.com> wrote:  
>>  
>>> Good Afternoon Brett:  
>>>  
>>> Attached please find the generic letter. I toned it down a bit. I don't  
>>> want the Bar to accuse me of taking unfair advantage of potential  
>>> litigants. If your staff has the time, please have someone email me a copy  
>>> of each letter before sending them out. Thank you.  
>>>  
>>> -Jacques

# Exhibit C

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

INGENUITY 13 LLC,  
  
  Plaintiff,  
  
  v.  
  
JOHN DOE,  
  
  Defendant.

Case Nos. 2:12-cv-8333-ODW(JCx)  
**ORDER TO SHOW CAUSE RE  
SANCTIONS FOR RULE 11 AND  
LOCAL RULE 83-3 VIOLATIONS**

The Court hereby orders Brett L. Gibbs, attorney of record for AF Holdings LLC and Ingenuity 13 LLC, to appear on March 11, 2013, at 1:30 p.m., to justify his violations of Federal Rule of Civil Procedure 11 and Local Rule 83-3 discussed herein.<sup>1</sup>

**A. Legal Standard**

The Court has a duty to supervise the conduct of attorneys appearing before it. *Erickson v. Newmar Corp.*, 87 F.3d 298, 301 (9th Cir. 1996). The power to punish contempt and to coerce compliance with issued orders is based on statutes and the Court's inherent authority. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512

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<sup>1</sup> The violations discussed herein were committed in the following related cases: *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal. filed Aug. 1, 2012); *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012). To facilitate this matter, Mr. Gibbs will be given the opportunity to address these violations together in one hearing rather than in several separate hearings.



1 U.S. 821, 831 (1994). And though this power must be exercised with restraint, the  
2 Court has wide latitude in fashioning appropriate sanctions to fit the conduct. See  
3 *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764–65 (1980).

4 **B. Rule 11(b)(3) Violations**

5 By presenting a pleading to the Court, an attorney certifies that—after  
6 conducting a reasonable inquiry—the factual contentions in the pleading have  
7 evidentiary support or, if specifically so identified, will likely have evidentiary  
8 support after a reasonable opportunity for further investigation or discovery. Fed. R.  
9 Civ. P. 11(b)(3). This precomplaint duty to find supporting facts is “not satisfied by  
10 rumor or hunch.” *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th  
11 Cir. 1992). The reasonableness of this inquiry is based on an objective standard, and  
12 subjective good faith provides no safe harbor. *Golden Eagle Distrib. Corp. v.*  
13 *Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986); *F.D.I.C. v. Calhoun*, 34 F.3d  
14 1291, 1296 (5th Cir. 1994); *Knipe v. Skinner*, 19 F.3d 72, 75 (2d Cir. 1994). The  
15 Court wields the discretion to impose sanctions designed to “deter repetition of the  
16 conduct or comparable conduct by others similarly situated.” Fed R. Civ. P 11(c)(4).

17 In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed  
18 Aug. 2, 2012), the Court ordered Plaintiff on December 20, 2012, to show cause why  
19 it failed to timely serve the Defendant or, if the Defendant has already been served, to  
20 submit the proof of service. (ECF No. 12.) In response, Plaintiff noted that the delay  
21 was because it waited to receive a response from the subscriber of the IP address  
22 associated with the alleged act of infringement. (ECF No. 14.) Plaintiff further noted:  
23 “Though the subscriber, David Wagar, remained silent, Plaintiff’s investigation of his  
24 household established that Benjamin Wagar was the likely infringer of Plaintiff’s  
25 copyright.” (ECF No. 14, at 2.) Based on this investigation, Plaintiff filed an  
26 Amended Complaint, substituting Benjamin Wagar for John Doe. (ECF No. 13.)

27 Plaintiff’s Amended Complaint alleges the following in connection with  
28 Benjamin Wagar:

- 1 • “Defendant Benjamin Wagar (‘Defendant’) knowingly and illegally  
2 reproduced and distributed Plaintiff’s copyrighted Video by acting in  
3 concert with others via the BitTorrent file sharing protocol and, upon  
4 information and belief, continues to do the same.” (AC ¶ 1);
- 5 • “Defendant is an individual who, upon information and belief, is over the  
6 age of eighteen and resides in this District.” (AC ¶ 4);
- 7 • “Defendant was assigned the Internet Protocol (‘IP’) address of  
8 96.248.225.171 on 2012-06-28 at 07:19:47 (UTC).” (AC ¶ 4);
- 9 • “Defendant, using IP address 96.248.225.171, without Plaintiff’s  
10 authorization or license, intentionally downloaded a torrent file particular  
11 to Plaintiff’s Video, purposefully loaded that torrent file into his  
12 BitTorrent client—in this case, Azureus 4.7.0.2—entered a BitTorrent  
13 swarm particular to Plaintiff’s Video, and reproduced and distributed the  
14 Video to numerous third parties.” (AC ¶ 22);
- 15 • “Plaintiff’s investigators detected Defendant’s illegal download on 2012-  
16 06-28 at 07:19:47 (UTC). However, this is a [sic] simply a snapshot  
17 observation of when the IP address was *observed* in the BitTorrent  
18 swarm; the conduct took itself [sic] place before and after this date and  
19 time.” (AC ¶ 23);
- 20 • “The unique hash value in this case is identified as  
21 F016490BD8E60E184EC5B7052CEB1FA570A4AF11.” (AC ¶ 24.)

22 In a different case, *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx)  
23 (C.D. Cal. filed Aug. 2, 2012), Plaintiff essentially makes the same response to the  
24 Court’s December 20, 2012 Order To Show Cause (ECF No. 12): “Though the  
25 subscriber, Marvin Denton, remained silent, Plaintiff’s investigation of his household  
26 established that Mayon Denton was the likely infringer of Plaintiff’s copyright.”  
27 (ECF No. 13, at 2.) And based on this information, Plaintiff filed an Amended  
28 Complaint (ECF No. 16), similar in all respects to the one filed against Benjamin

1 Wagar in *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed  
2 Aug. 2, 2012), with the following technical exceptions:

- 3 • “Defendant was assigned the Internet Protocol (‘IP’) address of 75.128.55.44  
4 on 2012-07-04 at 07:51:30 (UTC).” (AC ¶ 4);
- 5 • “Defendant . . . purposefully loaded that torrent file into his BitTorrent  
6 client—in this case, µTorrent 3.1.3 . . . .” (AC ¶ 22);
- 7 • “The unique hash value in this case is identified as  
8 0D47A7A035591B0BA4FA5CB86AFE986885F5E18E.” (AC ¶ 24.)

9 Upon review of these allegations, the Court finds two glaring problems that  
10 Plaintiff’s technical cloak fails to mask. Both of these are obvious to an objective  
11 observer having a working understanding of the underlying technology.

12 *1. Lack of reasonable investigation of copyright infringement activity*

13 The first problem is how Plaintiff concluded that the Defendants actually  
14 downloaded the entire copyrighted video, when all Plaintiff has as evidence is a  
15 “snapshot observation.” (AC ¶ 23.) This snapshot allegedly shows that the  
16 Defendants were downloading the copyrighted work—at least at that moment in time.  
17 But downloading a large file like a video takes time; and depending on a user’s  
18 Internet-connection speed, it may take a long time. In fact, it may take so long that the  
19 user may have terminated the download. The user may have also terminated the  
20 download for other reasons. To allege copyright infringement based on an IP  
21 snapshot is akin to alleging theft based on a single surveillance camera shot: a photo  
22 of a child reaching for candy from a display does not automatically mean he stole it.  
23 No Court would allow a lawsuit to be filed based on that amount of evidence.

24 What is more, downloading data via the Bittorrent protocol is not like stealing  
25 candy. Stealing a piece of a chocolate bar, however small, is still theft; but copying an  
26 encrypted, unusable piece of a video file via the Bittorrent protocol may not be  
27 copyright infringement. In the former case, some chocolate was taken; in the latter  
28 case, an encrypted, unusable chunk of zeroes and ones. And as part of its prima facie

1 copyright claim, Plaintiff must show that Defendants copied the copyrighted work.  
2 *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). If a download  
3 was not completed, Plaintiff's lawsuit may be deemed frivolous.

4 In this case, Plaintiff's reliance on snapshot evidence to establish its copyright  
5 infringement claims is misplaced. A reasonable investigation should include evidence  
6 showing that Defendants downloaded the entire copyrighted work—or at least a  
7 usable portion of a copyrighted work. Plaintiff has none of this—no evidence that  
8 Defendants completed their download, and no evidence that what they downloaded is  
9 a substantially similar copy of the copyrighted work. Thus, Plaintiff's attorney  
10 violated Rule 11(b)(3) for filing a pleading that lacks factual foundation.

11 2. *Lack of reasonable investigation of actual infringer's identity*

12 The second problem is more troublesome. Here, Plaintiff concluded that  
13 Benjamin Wagar is the person who illegally downloaded the copyrighted video. But  
14 Plaintiff fails to allege facts in the Amended Complaint to show how Benjamin Wagar  
15 is the infringer, other than noting his IP address, the name of his Bittorrent client, and  
16 the alleged time of download.<sup>2</sup> Plaintiff's December 27, 2012 Response to the Court's  
17 Order to Show Cause re Lack of Service sheds some light:

18 Though the subscriber, David Wagar, remained silent, Plaintiff's  
19 investigation of his household established that Benjamin Wagar was the  
20 likely infringer of Plaintiff's copyright. As such, Plaintiff mailed its  
21 Amended Complaint to the Court naming Benjamin Wagar as the  
22 Defendant in this action. (ECF No. 14, at 2.)

23 The disconnect is how Plaintiff arrived at this conclusion—that the actual infringer is  
24 a member of the subscriber's household (and not the subscriber himself or anyone  
25 else)—when all it had was an IP address, the name of the Bittorrent client used, the  
26 alleged time of download, and an unresponsive subscriber.

27 <sup>2</sup> This analysis similarly applies in *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D.  
28 Cal. filed Aug. 2, 2012), where Plaintiff fails to allege sufficient facts to show how Mayon Denton is  
the infringer.

1 Plaintiff's December 27, 2012 Discovery Status Report gives additional insight  
2 into Plaintiff's deductive process:

3 In cases where the subscriber remains silent, Plaintiff conducts  
4 investigations to determine the likelihood that the subscriber, or someone  
5 in his or her household, was the actual infringer. . . . For example, if the  
6 subscriber is 75 years old, or the subscriber is female, it is statistically  
7 quite unlikely that the subscriber was the infringer. In such cases,  
8 Plaintiff performs an investigation into the subscriber's household to  
9 determine if there is a likely infringer of Plaintiff's copyright. . . .  
Plaintiff bases its choices regarding whom to name as the infringer on  
factual analysis. (ECF No. 15, at 24.)

10 The Court interprets this to mean: if the subscriber is 75 years old or female, then  
11 Plaintiff looks to see if there is a pubescent male in the house; and if so, he is named  
12 as the defendant. Plaintiff's "factual analysis" cannot be characterized as anything  
13 more than a hunch.

14 Other than invoking undocumented statistics, Plaintiff provides nothing to  
15 indicate that Benjamin Wagar is the infringer. While it is plausible that Benjamin  
16 Wagar is the infringer, Plaintiff's deduction falls short of the reasonableness standard  
17 required by Rule 11.

18 For instance, Plaintiff cannot show that Benjamin is the infringer instead of  
19 someone else, such as: David Wagar; other members of the household; family guests;  
20 or, the next door neighbor who may be leeching from the Wagars' Internet access.  
21 Thus, Plaintiff acted recklessly by naming Benjamin Wagar as the infringer based on  
22 its haphazard and incomplete investigation.

23 Further, the Court is not convinced that there is no solution to the problem of  
24 identifying the actual infringer. Here, since Plaintiff has the identity of the subscriber,  
25 Plaintiff can find the subscriber's home address and determine (by driving up and  
26 scanning the airwaves) whether the subscriber, (1) has Wi-Fi, and (2) has password-  
27 protected his Wi-Fi access, thereby reducing the likelihood that an unauthorized user  
28 outside the subscriber's home is the infringer. In addition, since Plaintiff is tracking a

1 number of related copyrighted videos, Plaintiff can compile its tracking data to  
2 determine whether other copyrighted videos were downloaded under the same IP  
3 address. This may suggest that the infringer is likely a resident of the subscriber's  
4 home and not a guest. And an old-fashioned stakeout may be in order: the presence of  
5 persons within the subscriber's home may be correlated with tracking data—the  
6 determination of who would have been in the subscriber's home when the download  
7 was initiated may assist in discovering the actual infringer.

8       Such an investigation may not be perfect, but it narrows down the possible  
9 infringers and is better than the Plaintiff's current investigation, which the Court finds  
10 involves nothing more than blindly picking a male resident from a subscriber's home.  
11 But this type of investigation requires time and effort, something that would destroy  
12 Plaintiff's business model.

13       The Court has previously expressed concern that in pornographic copyright  
14 infringement lawsuits like these, the economics of the situation makes it highly likely  
15 for the accused to immediately pay a settlement demand. Even for the innocent, a  
16 four-digit settlement makes economic sense over fighting the lawsuit in court—not to  
17 mention the benefits of preventing public disclosure (by being named in a lawsuit) of  
18 allegedly downloading pornographic videos.

19       And copyright lawsuits brought by private parties for damages are different  
20 than criminal investigations of cybercrimes, which sometimes require identification of  
21 an individual through an IP address. In these criminal investigations, a court has some  
22 guarantee from law enforcement that they will bring a case only when they actually  
23 have a case and have confidently identified a suspect. In civil lawsuits, no such  
24 guarantees are given. So, when viewed with a court's duty to serve the public interest,  
25 a plaintiff cannot be given free rein to sue anyone they wish—the plaintiff has to  
26 actually show facts supporting its allegations.

27 ///

28 ///

1 **C. Local Rule 83-3 Violations**

2 Under Local Rule 83-3, the Court possesses the power to sanction attorney  
3 misconduct, including: disposing of the matter; referring the matter to the Standing  
4 Committee on Discipline; or taking “any action the Court deems appropriate.”  
5 L.R. 83-3.1. This includes the power to fine and imprison for contempt of the Court’s  
6 authority, for: (1) misbehavior of any person in its presence or so near thereto as to  
7 obstruct the administration of justice; (2) misbehavior of any of its officers in their  
8 official transactions; or, (3) disobedience or resistance to its lawful writ, process,  
9 order, rule, decree, or command. 18 U.S.C. § 401.

10 The Court is concerned with three instances of attorney misconduct. The first  
11 and second instances are related and concern violating the Court’s discovery order.  
12 The third instance concerns possible fraud upon the Court.

13 *1. Failure to comply with the Court’s discovery order*

14 In *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal. filed  
15 Aug. 1, 2012) and *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal.  
16 filed Aug. 2, 2012), the Court ordered Plaintiff to “cease its discovery efforts relating  
17 to or based on information obtained through any abovementioned Rule 45  
18 subpoenas.” (ECF No. 13, at 1; ECF No. 10, at 1.) Further, Plaintiff was required to  
19 name all persons that were identified through any Rule 45 subpoenas. (*Id.*)

20 Plaintiff responded on November 1, 2012, and indicated that it did not obtain  
21 any information about the subscribers in both of these cases. (ECF No. 10, at 6–7,  
22 10.)<sup>3</sup> But in response to the Court’s subsequent Orders to Show Cause, Plaintiff not  
23 only named the subscribers, but recounted its efforts to contact the subscriber and find  
24 additional information. (ECF No. 15; ECF No. 18.)

25 This conduct contravenes the Court’s order to cease discovery. Plaintiff has  
26 provided no justification why it ignored the Court’s order.

27 \_\_\_\_\_  
28 <sup>3</sup> This response was filed in *AF Holdings LLC v. Doe*, No. 2:12-cv-5709-ODW(JCx) (C.D. Cal. filed  
July 2, 2012).

1           2.     *Fraud on the Court*

2           Upon review of papers filed by attorney Morgan E. Pietz, the Court perceives  
3 that Plaintiff may have defrauded the Court. (ECF No. 23.)<sup>4</sup> At the center of this  
4 issue is the identity of a person named Alan Cooper and the validity of the underlying  
5 copyright assignments.<sup>5</sup> If it is true that Alan Cooper's identity was misappropriated  
6 and the underlying copyright assignments were improperly executed using his  
7 identity, then Plaintiff faces a few problems.

8           First, with an invalid assignment, Plaintiff has no standing in these cases.  
9 Second, by bringing these cases, Plaintiff's conduct can be considered vexatious, as  
10 these cases were filed for a facially improper purpose. And third, the Court will not  
11 idle while Plaintiff defrauds this institution.

12     **D.     Conclusion**

13           Accordingly, the Court hereby **ORDERS** Brett L. Gibbs, **TO SHOW CAUSE**  
14 why he should not be sanctioned for the following:

- 15           • In *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal.  
16           filed Aug. 1, 2012), violating the Court's October 19, 2012 Order  
17           instructing AF Holdings to cease its discovery efforts based on  
18           information obtained through any earlier-issued subpoenas;
- 19           • In *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal.  
20           filed Aug. 2, 2012), violating the Court's October 19, 2012 Order  
21           instructing AF Holdings to cease its discovery efforts based on  
22           information obtained through any earlier-issued subpoenas;

23     ///

24  
25     <sup>4</sup> Although the papers revealing this possible fraud were filed in *Ingenuity 13 LLC v. Doe*, No. 2:12-  
26     cv-8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012), this fraud, if true, was likely committed by  
27     Plaintiff in each of its cases before this Court.

28     <sup>5</sup> For example, in *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2,  
2012), Plaintiff filed a copyright assignment signed by Alan Cooper on behalf of Plaintiffs. (ECF  
No. 16-1.)



- 1           • In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal.  
2           filed Aug. 2, 2012), violating Rule 11(b)(2) by:
- 3                 ○ alleging copyright infringement based on a snapshot of Internet  
4                 activity, without conducting a reasonable inquiry; or,
- 5                 ○ alleging that Benjamin Wagar is the infringer, without conducting  
6                 a reasonable inquiry;
- 7           • In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal.  
8           filed Aug. 2, 2012), violating Rule 11(b)(2) by:
- 9                 ○ alleging copyright infringement based on a snapshot of Internet  
10                activity, without conducting a reasonable inquiry; or,
- 11                ○ alleging that Mayon Denton is the infringer, without conducting a  
12                reasonable inquiry;
- 13           • In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal.  
14           filed Sept. 27, 2012), perpetrating fraud on the Court by  
15           misappropriating the identity of Alan Cooper and filing lawsuits based  
16           on an invalid copyright assignment.

17           This order to show cause is scheduled for hearing on March 11, 2013, at 1:30  
18 p.m., to provide Mr. Gibbs the opportunity to justify his conduct. Based on the  
19 unusual circumstances of this case, the Court invites Morgan E. Pietz to present  
20 evidence concerning the conduct outlined in this order. The Court declines to sanction  
21 Plaintiffs AF Holdings LLC and Ingenuity 13 LLC at this time for two reasons:  
22 (1) Mr. Gibbs appears to be closely related to or have a fiduciary interest in Plaintiffs;  
23 and; (2) it is likely Plaintiffs are devoid of assets.

24           If Mr. Gibbs or Mr. Pietz so desire, they each may file by February 19, 2013, a  
25 brief discussing this matter. The Court will also welcome the appearance of Alan  
26 Cooper—to either confirm or refute the fraud allegations.

27           Based on the evidence presented at the March 11, 2013 hearing, the Court will  
28 consider whether sanctions are appropriate, and if so, determine the proper

1 punishment. This may include a monetary fine, incarceration, or other sanctions  
2 sufficient to deter future misconduct. Failure by Mr. Gibbs to appear will result in the  
3 automatic imposition of sanctions along with the immediate issuance of a bench  
4 warrant for contempt.

5 **IT IS SO ORDERED.**

6 February 7, 2012



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7  
8 **OTIS D. WRIGHT, II**  
9 **UNITED STATES DISTRICT JUDGE**

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# Exhibit D



**JESSE WHITE**  
 SECRETARY OF STATE



**CORPORATION FILE DETAIL REPORT**

Entity Name	PRENDA LAW INC.	File Number	68212189
Status	ACTIVE		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	11/07/2011	State	ILLINOIS
Agent Name	PAUL DUFFY	Agent Change Date	11/07/2011
Agent Street Address	161 N CLARK ST STE 3200	President Name & Address	PAUL DUFFY
Agent City	CHICAGO	Secretary Name & Address	
Agent Zip	60601	Duration Date	PERPETUAL
Annual Report Filing Date	02/06/2013	For Year	2012

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[Purchase Certificate of Good Standing](#)

(One Certificate per Transaction)

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# Exhibit E

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

**DISTRICT COURT  
FOURTH JUDICIAL DISTRICT**

---

Alan Cooper,

Court File No.: 27-CV-13-3463

Plaintiff,

Judge: Honorable Ann Leslie Alton

v.

John Lawrence Steele, Prenda Law Inc., AF  
Holdings, LLC, Ingenuity13, LLC,

Defendants.

---

**AFFIDAVIT OF PAUL DUFFY IN SUPPORT OF DEFENDANT PRENDA LAW, INC.'S  
RESPONSE TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

I, Paul Duffy, declare as follows:

1. I am the sole principal, shareholder, officer, and director of Defendant Prenda Law, Inc. I am also the registered agent for Defendant Prenda Law, Inc.
2. Plaintiff's principal place of business is 161 N. Clark St., Suite 3200, Chicago, IL 60601, which is also the address of the registered agent.
3. For the entire time up to and including when Plaintiff asserts that he mailed the summons and complaint to Plaintiff's principal place of business, I maintained an office at Plaintiff's principal place of business and regularly worked there on a daily basis from Monday through Friday.
4. As such, a reasonably diligent attempt to personally serve me at Defendant's principal place of business would have been successful.
5. I am not aware of a single attempt by any person to serve me with any paper at 161 N. Clark Street, Suite 3200, Chicago, Illinois.

161 Fed

6. The practice of the receptionist at 3200 N. Clark Street, Suite 3200 in Chicago, Illinois is to notify me by e-mail whenever a visitor asks for me. I routinely receive such e-mails for those asking to see me. I did not receive a message from the receptionist at Suite 3200 that a visitor whom I did not know had asked to see me, from the time Plaintiff filed the Complaint in this action through the time he purports to have sent the Complaint to me by mail.

7. I am unaware of any attempt by any person to personally serve me with the Complaint or any paper in this action at any time.

8. I declare under penalty of perjury that the foregoing is true and correct based on my own personal knowledge, except for those matters stated on information and belief, and those matters I believe to be true. If called upon to testify, I can and will competently testify as set forth above.

DATED: May 14, 2013

By:



*Andrianna D Flores*  
Cook County 5/14/2013.  
State: Illinois

# Exhibit G



Paul D:

Attached are .pdf documents for a new case to file in Illinois, Western District. I also put this in [REDACTED]

All you will need to do is draft the civil cover sheet, and file these (they are already in .pdf form).

Please email or call me with any questions.

--  
Brett L. Gibbs, Esq. (SBN 251000)  
Of Counsel to Prenda Law Inc.  
38 Miller Avenue, #263  
Mill Valley, CA 94941  
415-341-5318  
blgibbs@wefightpiracy.com

NOTICE: THIS EMAIL IS INTENDED TO BE PART OF A SETTLEMENT NEGOTIATION AND IS NOT ADMISSIBLE UNDER FRE RULE 408.

NOTICE:

This communication is covered by the Electronic Communications Privacy Act, found at 18 U.S.C. 2510 et. seq. and is intended to remain confidential and is subject to applicable attorney/client and/or work product privileges.

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Attachments

Download	View	untitled-[1.2]	text/html	2.1 kB
Download	View	1 COMPLAINT [REDACTED]	application/pdf	137 kB
Download	View	1-1 EXHIBIT A [REDACTED]	application/pdf	152 kB
Download	View	2 CORPORATE DISCLOSURE STATEMENT [REDACTED]	application/pdf	89 kB

[REDACTED]

I am giving you your first (and likely not last) Hacker Case for Minnesota. Because of the unique non-filing process (i.e. pocket service) in Minnesota, you (with the help of [REDACTED] will be able to initiate this suit on Monday. All of the necessary documents are attached.

In light of Minnesota's Rules on "Pocket Service," this Complaint \*won't\* be filed initially. Instead, \*copies\* \*(not the original) of the executed Summons and Complaint will be personally served on\* [REDACTED] (via a process server -- I assume [REDACTED] will help you coordinate that), and after the process is completed, the server will need to fill out the Affidavit of Service (attached), and return this to you. A copy of the Summons, Complaint, and Affidavit of Service should be scanned and put up on [REDACTED]

[REDACTED] Also, any further documents you receive in this case (such as the Answer), or future cases, should all be docketed [REDACTED].

Please note that my information is everywhere that it can legally be. This is because we are trying to drive all of the phone calls to me, so we don't have to burden local counsel with settlement discussions. If, for instance, [REDACTED] would like to serve you personally, and contacts me to initiate that process, I will be in touch with you.

Please contact me if you have any questions. Remember, while this is going to be your case, you can still talk to me about it (and future ones) at any time. Understandably, considering this is the first time in Minnesota (for both of us), having a quick pre-service conversation to iron out any concerns or questions might be helpful. Please feel free to call me: 415-341-5318 or 415-381-3104.

Thanks, [REDACTED]

--  
Brett L. Gibbs, Esq. (SBN 251000)  
Of Counsel to Prenda Law Inc.  
38 Miller Avenue, #263  
Mill Valley, CA 94941  
415-341-5318  
blgibbs@wefightpiracy.com

Matt:

I talked with the Unauthorized Practice of Law Department in Florida, and got an explanation from an attorney over there about my ability to participate in this case. Rule 4-5.5 Unlicensed Practice of Law; Multi-Jurisdictional Practice of Law is the key.

At this point, applying to the Court for pro-hac vice counsel, at this point, is not the move. According to the attorney, and the Rule, I can still participate in these cases if I have reasonable expectation of being allowed to be admitted in pro-hac vice if I were to apply. The limit is 3 pro-hac vice's per 365-day calendar year, and as long as I qualify for that I am good with the California bar, I am fine negotiating with [REDACTED] because I have can reasonably expect to be admitted pro hac if need be.

That said, it seems that I can only enter on [REDACTED] and [REDACTED], as these are the clients whom are in the same state as I am licensed, thus the ones that I can reasonably expect to enter as pro hac counsel. (Rule 4-5.5(c)(3)(A)).

That said, feel free to tell [REDACTED] to contact me for settlement negotiations on the [REDACTED] clients. From there, he might get a good idea of where we stand on [REDACTED]

Thanks,

Brett Gibbs  
(415) 325-5900

Matt:

We have noticed that there are two motions to dismiss in the cases involving [REDACTED] (i.e. [REDACTED]). The responses to those motions are due \*Tomorrow\*.

While we are drafting the Responses, we need to make sure that you are available tomorrow to file them.

I called you earlier today, and left you a message, but couldn't get in touch with you. Please give me a call tomorrow (around 9:00 am (PST)), or simply email back saying that you will be around tomorrow, and will be able to file the responses that we are currently drafting.

Thanks,

--  
Brett L. Gibbs, Esq. (SBN 251000)  
Of Counsel to Prenda Law Inc.  
38 Miller Avenue, #263  
Mill Valley, CA 94941  
415-341-5318  
blgibbs@wefightpiracy.com

Good sign... educating the judicial system, one judge at a time.

Though, how arrogant is this judge? "No, your honor, we are not the idiots here... it is clearly you and your staff without with requisite mental facilities"

Of well, a win is a win.

# Exhibit I

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

9

10

11

INGENUITY 13 LLC,

Case No. 2:12-cv-8333-ODW(JCx)

12

Plaintiff,

**ORDER ISSUING SANCTIONS**

13

v.

14

JOHN DOE,

15

Defendant.

16

“The needs of the many outweigh the needs of the few.”

17

—Spock, *Star Trek II: The Wrath of Khan* (1982).

18

**I. INTRODUCTION**

19

Plaintiffs<sup>1</sup> have outmaneuvered the legal system.<sup>2</sup> They’ve discovered the nexus of antiquated copyright laws, paralyzing social stigma, and unaffordable defense costs. And they exploit this anomaly by accusing individuals of illegally downloading a single pornographic video. Then they offer to settle—for a sum

23

<sup>1</sup> The term “Plaintiffs” used in this order refers to AF Holdings LLC, Ingenuity 13 LLC, as well as related entities, individuals, and attorneys that collaborated in the underlying scheme fronted by AF Holdings and Ingenuity 13.

24

25

<sup>2</sup> This order concerns conduct committed in the following related cases: *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal. filed Aug. 1, 2012); *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012).

26

27

28

1 calculated to be just below the cost of a bare-bones defense. For these individuals,  
2 resistance is futile; most reluctantly pay rather than have their names associated with  
3 illegally downloading porn. So now, copyright laws originally designed to  
4 compensate starving artists allow, starving attorneys in this electronic-media era to  
5 plunder the citizenry.

6 Plaintiffs do have a right to assert their intellectual-property rights, so long as  
7 they do it right. But Plaintiffs' filing of cases using the same boilerplate complaint  
8 against dozens of defendants raised the Court's alert. It was when the Court realized  
9 Plaintiffs engaged their cloak of shell companies and fraud that the Court went to  
10 battlestations.

## 11 II. PROCEDURAL HISTORY

12 The Court issued its February 7, 2013 Order to Show Cause re Sanctions to  
13 allow counsel, Brett Gibbs, to explain why he ignored the Court's discovery-stay  
14 Order, filed complaints without reasonable investigation, and defrauded the Court by  
15 asserting a copyright assignment secured with a stolen identity. (ECF No. 48.) As  
16 evidence materialized, it turned out that Gibbs was just a redshirt.

17 Gibbs's behavior in the porno-trolling collective was controlled by several  
18 attorneys, under whom other individuals also took their orders. Because it was  
19 conceivable that these attorneys (and others) were culpable for Gibbs's conduct, the  
20 Court ordered these parties to appear.

21 The following additional parties were ordered to appear: (a) John Steele, of  
22 Steele Hansmeier PLLC, Prenda Law, Inc., and/or Livewire Holdings LLC; (b) Paul  
23 Hansmeier, of Steele Hansmeier PLLC and/or Livewire Holdings LLC; (c) Paul  
24 Duffy, of Prenda Law, Inc.; (d) Angela Van Den Hemel, of Prenda Law, Inc.;  
25 (e) Mark Lutz, of Prenda Law, Inc., AF Holdings LLC, and/or Ingenuity 13 LLC;  
26 (f) Alan Cooper, of AF Holdings LLC; (g) Peter Hansmeier, of 6881 Forensics, LLC;  
27 (h) Prenda Law, Inc.; (i) Livewire Holdings LLC; (j) Steele Hansmeier PLLC; (k) AF  
28 Holdings LLC; (l) Ingenuity 13 LLC; (m) 6881 Forensics, LLC; and (n) Alan Cooper,



1 of 2170 Highway 47 North, Isle, MN 56342. (ECF Nos. 66, 86.) These parties were  
2 ordered to show cause why they should not be sanctioned for their behind-the-scenes  
3 role in the conduct facially perpetrated by Gibbs. These parties were also ordered to  
4 explain the nature of their operations, relationships, and financial interests.

### 5 III. LEGAL STANDARD

6 The Court has a duty to supervise the conduct of attorneys appearing before it.  
7 *Erickson v. Newmar Corp.*, 87 F.3d 298, 301 (9th Cir. 1996). The power to punish  
8 contempt and to coerce compliance with issued orders is based on statutes and the  
9 Court's inherent authority. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512  
10 U.S. 821, 831 (1994). Though this power must be exercised with restraint, the Court  
11 has wide latitude in fashioning appropriate sanctions to fit the conduct. *See Roadway*  
12 *Express, Inc. v. Piper*, 447 U.S. 752, 764–65 (1980).

13 Under the Court's inherent authority, parties and their lawyers may be  
14 sanctioned for improper conduct. *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001).  
15 This inherent power extends to a full range of litigation abuses, the litigant must have  
16 engaged in bad faith or willful disobedience of a court's order. *Id.* at 992. Sanctions  
17 under the Court's inherent authority are particularly appropriate for fraud perpetrated  
18 on the court. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 54 (1991).

### 19 IV. DISCUSSION

#### 20 A. Findings of fact

21 Based on the evidence presented on the papers and through sworn testimony,  
22 the Court finds the following facts, including those based on adverse inferences drawn  
23 from Steele, Hansmeier, Duffy, and Van Den Hemel's blanket refusal to testify.<sup>3</sup>

24 1. Steele, Hansmeier, and Duffy ("Principals") are attorneys with shattered  
25 law practices. Seeking easy money, they conspired to operate this enterprise and

26  
27 <sup>3</sup> Even if their refusal was based on the Fifth Amendment privilege against self-incrimination, the  
28 Court still may draw adverse inferences against them in this civil proceeding. *Baxter v. Palmigiano*,  
425 U.S. 308, 318 (1976).

1 formed the AF Holdings and Ingenuity 13 entities (among other fungible entities) for  
2 the sole purpose of litigating copyright-infringement lawsuits. They created these  
3 entities to shield the Principals from potential liability and to give an appearance of  
4 legitimacy.

5 2. AF Holdings and Ingenuity 13 have no assets other than several  
6 copyrights to pornographic movies. There are no official owners or officers for these  
7 two offshore entities, but the Principals are the de facto owners and officers.

8 3. The Principals started their copyright-enforcement crusade in about 2010,  
9 through Prenda Law, which was also owned and controlled by the Principals. Their  
10 litigation strategy consisted of monitoring BitTorrent download activity of their  
11 copyrighted pornographic movies, recording IP addresses of the computers  
12 downloading the movies, filing suit in federal court to subpoena Internet Service  
13 Providers (“ISPs”) for the identity of the subscribers to these IP addresses, and  
14 sending cease-and-desist letters to the subscribers, offering to settle each copyright-  
15 infringement claim for about \$4,000.

16 4. This nationwide strategy was highly successful because of statutory-  
17 copyright damages, the pornographic subject matter, and the high cost of litigation.  
18 Most defendants settled with the Principals, resulting in proceeds of millions of  
19 dollars due to the numerosity of defendants. These settlement funds resided in the  
20 Principals’ accounts and not in accounts belonging to AF Holdings or Ingenuity 13.  
21 No taxes have been paid on this income.

22 5. For defendants that refused to settle, the Principals engaged in vexatious  
23 litigation designed to coerce settlement. These lawsuits were filed using boilerplate  
24 complaints based on a modicum of evidence, calculated to maximize settlement  
25 profits by minimizing costs and effort.

26 6. The Principals have shown little desire to proceed in these lawsuits when  
27 faced with a determined defendant. Instead of litigating, they dismiss the case. When  
28 pressed for discovery, the Principals offer only disinformation—even to the Court.

1           7.     The Principals have hired willing attorneys, like Gibbs, to prosecute these  
2 cases. Though Gibbs is culpable for his own conduct before the Court, the Principals  
3 directed his actions. In some instances, Gibbs operated within narrow parameters  
4 given to him by the Principals, whom he called “senior attorneys.”

5           8.     The Principals maintained full control over the entire copyright-litigation  
6 operation. The Principals dictated the strategy to employ in each case, ordered their  
7 hired lawyers and witnesses to provide disinformation about the cases and the nature  
8 of their operation, and possessed all financial interests in the outcome of each case.

9           9.     The Principals stole the identity of Alan Cooper (of 2170 Highway 47  
10 North, Isle, MN 56342). The Principals fraudulently signed the copyright assignment  
11 for “Popular Demand” using Alan Cooper’s signature without his authorization,  
12 holding him out to be an officer of AF Holdings. Alan Cooper is not an officer of AF  
13 Holdings and has no affiliation with Plaintiffs other than his employment as a  
14 groundskeeper for Steele. There is no other person named Alan Cooper related to AF  
15 Holdings or Ingenuity 13.

16           10.    The Principals ordered Gibbs to commit the following acts before this  
17 Court: file copyright-infringement complaints based on a single snapshot of Internet  
18 activity; name individuals as defendants based on a statistical guess; and assert a  
19 copyright assignment with a fraudulent signature. The Principals also instructed  
20 Gibbs to prosecute these lawsuits only if they remained profitable; and to dismiss  
21 them otherwise.

22           11.    Plaintiffs have demonstrated their willingness to deceive not just this  
23 Court, but other courts where they have appeared. Plaintiffs’ representations about  
24 their operations, relationships, and financial interests have varied from feigned  
25 ignorance to misstatements to outright lies. But this deception was calculated so that  
26 the Court would grant Plaintiffs’ early-discovery requests, thereby allowing Plaintiffs  
27 to identify defendants and exact settlement proceeds from them. With these granted  
28 requests, Plaintiffs borrow the authority of the Court to pressure settlement.

1 **B. Sanctions**

2 Although the Court originally notified the parties that sanctions would be  
3 imposed under Federal Rule of Civil Procedure 11(b)(3) and Local Rule 83-3, the  
4 Court finds it more appropriate to sanction the parties under its inherent authority. *See*  
5 *In re DeVille*, 361 F.3d 539, 550 (9th Cir. 2004) (“[T]he bankruptcy court’s failure to  
6 specify, in advance of the disciplinary proceedings, that its inherent power was a basis  
7 for those proceedings, did not serve to undercut its sanctioning authority.”). The  
8 sanctions for Plaintiffs’ misconduct are as follows.

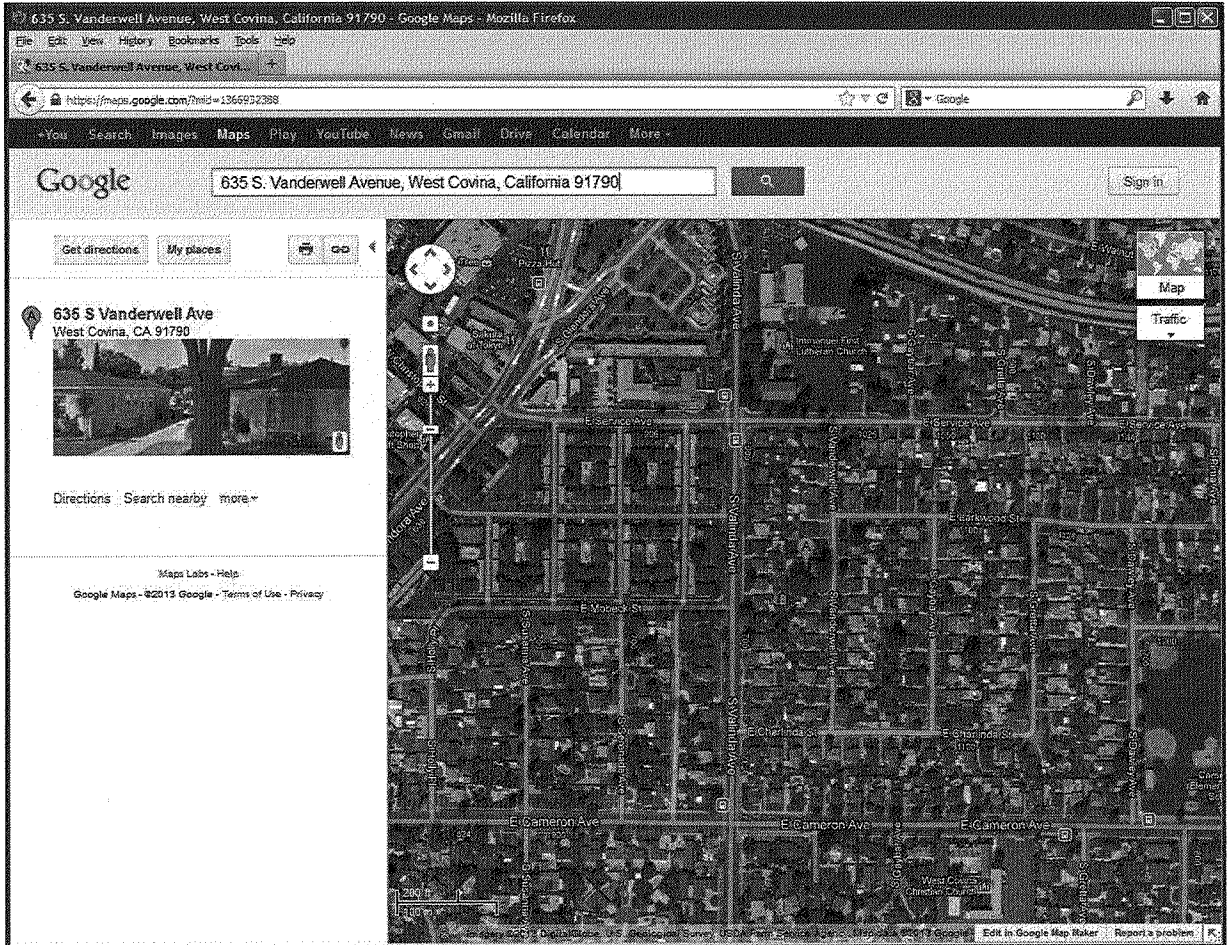
9 1. *Rule 11 sanctions*

10 The Court maintains that its prior analysis of Plaintiffs’ Rule 11 violations is  
11 accurate. (ECF No. 48.) Plaintiffs can only show that someone, using an IP address  
12 belonging to the subscriber, was seen online in a torrent swarm. But Plaintiffs did not  
13 conduct a sufficient investigation to determine whether that person actually  
14 downloaded enough data (or even anything at all) to produce a viewable video.  
15 Further, Plaintiffs cannot conclude whether that person spoofed the IP address, is the  
16 subscriber of that IP address, or is someone else using that subscriber’s Internet  
17 access. Without better technology, prosecuting illegal BitTorrent activity requires  
18 substantial effort in order to make a case. It is simply not economically viable to  
19 *properly* prosecute the illegal download of a single copyrighted video.

20 Enter Plaintiffs and their cottage-industry lawsuits. Even so, the Court is not as  
21 troubled by their lack of reasonable investigation as by their cover-up. Gibbs argued  
22 that a deep inquiry was performed *prior* to filing. Yet these arguments are not  
23 credible and do not support Gibbs’s conclusions. Instead, Gibbs’s arguments suggest  
24 a hasty after-the-fact investigation, and a shoddy one at that.

25 For instance, Gibbs characterized Marvin Denton’s property as “a very large  
26 estate consisting of a gate for entry and multiple separate houses/structures on the  
27 property.” (ECF No. 49, at 19.) He stated this to demonstrate the improbability that  
28 Denton’s Wi-Fi signal could be received by someone outside the residence. But

1 Denton's property is not a large estate; it is a small house in a closely packed  
2 residential neighborhood. There are also no gates visible.



20 Gibbs's statement is a blatant lie. His statement resembles other statements  
21 given by Plaintiffs in this and their other cases: statements that sound reasonable but  
22 lack truth. Thus, the Court concludes that Gibbs, even in the face of sanctions,  
23 continued to make factual misrepresentations to the Court.

24 Nevertheless, Rule 11 sanctions are inappropriate here because it is the wrong  
25 sanctions vehicle at this stage of litigation. The cases have already been dismissed  
26 and monetary sanctions are not available. Fed. R. Civ. P 11(c)(5)(B) (a court cannot  
27 impose a monetary sanction on its own unless it issued the show-cause order before  
28 voluntary dismissal). The more appropriate sanction for these Rule 11 violations is

1 what the Court had already imposed: denial of requests for early discovery. (ECF  
2 No. 28.)

3 2. *Sanctions under the Court's inherent authority*

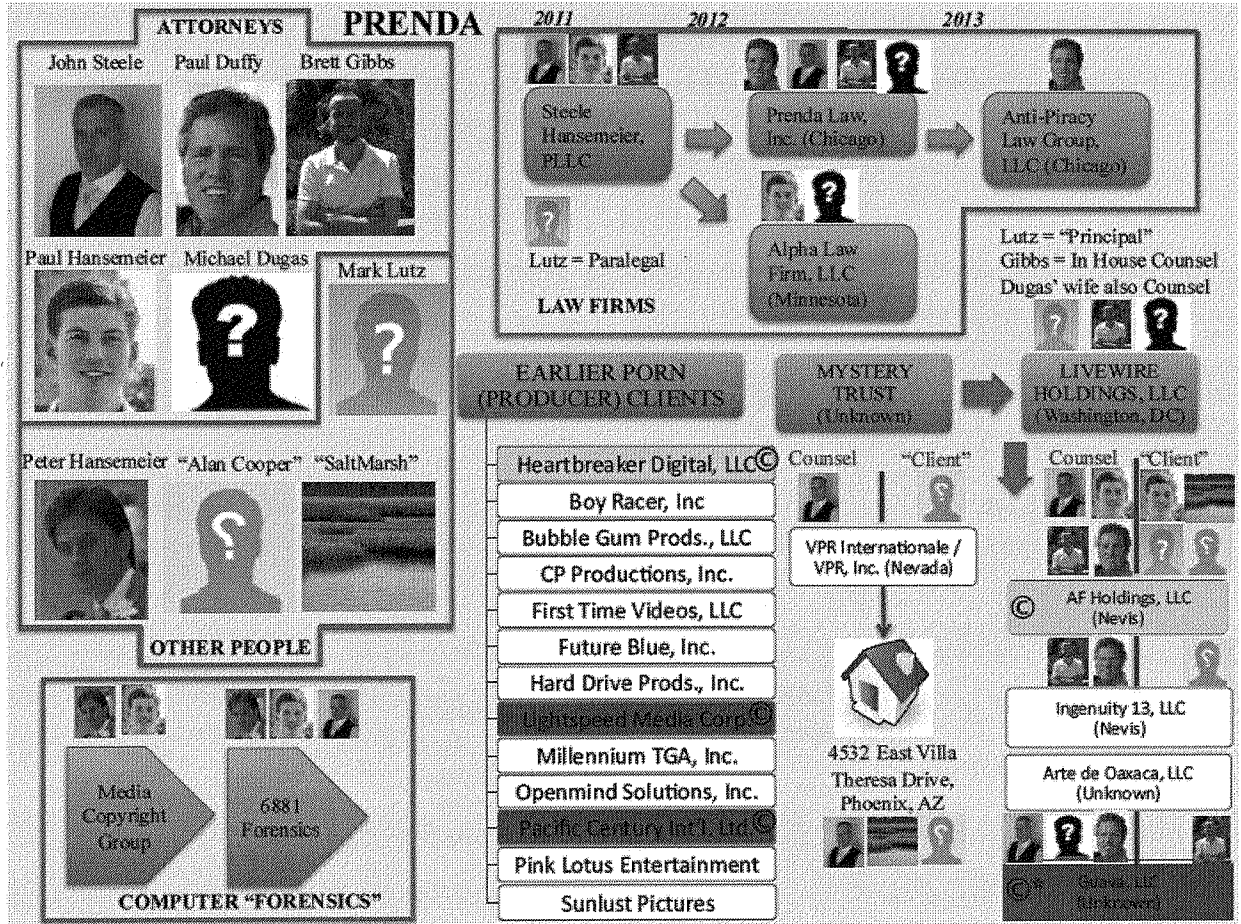
4 In addition to Gibbs's misrepresentations, there is the matter of the ignored  
5 Court Order vacating early discovery. (ECF No. 28.) The evidence does not show  
6 that the Order was ignored because of miscommunication among Plaintiffs. The  
7 Order was purposely ignored—hoping that the ISPs were unaware of the vacatur and  
8 would turn over the requested subscriber information.

9 Then there is the Alan Cooper forgery. Although a recipient of a copyright  
10 assignment need not sign the document, a forgery is still a forgery. And trying to pass  
11 that forged document by the Court smacks of fraud. Unfortunately, other than these  
12 specific instances of fraud, the Court cannot make more detailed findings of fraud.

13 Nevertheless, it is clear that the Principals' enterprise relies on deception. Part  
14 of that ploy requires cooperation from the courts, which could only be achieved  
15 through deception. In other words, if the Principals assigned the copyright to  
16 themselves, brought suit in their own names, and disclosed that they had the sole  
17 financial interest in the suit, a court would scrutinize their conduct from the outset.  
18 But by being less than forthcoming, they defrauded the Court. They anticipated that  
19 the Court would blindly approve their early-discovery requests, thereby opening the  
20 door to more settlement proceeds.

21 The Principals also obfuscate other facts, especially those concerning their  
22 operations, relationships, and financial interests. The Principals' web of  
23 disinformation is so vast that the Principals cannot keep track—their explanations of  
24 their operations, relationships, and financial interests constantly vary. This makes it  
25 difficult for the Court to make a concrete determination.

26 Still, the Court adopts as its finding the following chart detailing Plaintiffs'  
27 relationships. Though incomplete, this chart is about as accurate as possible given  
28 Plaintiffs' obfuscation.



As for Van Den Hemel, Lutz, and Hansemeier, they are not without fault even though they acted under orders from the Principals. They were not merely assimilated; they knowingly participated in this scheme, reaping the benefits when the going was good. Even so, their status as non-attorneys *and* non-parties severely limits the sanctions that could be levied against them.

Despite these findings, the Court deems these findings insufficient to support a large monetary sanction—a seven-digit sanction adequate to deter Plaintiffs from continuing their profitable enterprise. Even if the Court enters such a sanction, it is certain that Plaintiffs will transfer out their settlement proceeds and plead paucity. Yet Plaintiffs' bad-faith conduct supports other more fitting sanctions.

///

1 First, an award of attorney's fees to Defendants is appropriate. This award  
2 compensates them for expenses incurred in this vexatious lawsuit, especially for their  
3 efforts in countering and revealing the fraud perpetrated by Plaintiffs.

4 So far, only Morgan Pietz and Nicholas Ranallo have appeared.<sup>4</sup> Upon review,  
5 the Court finds Pietz's expenditure of 120.5 hours at an hourly rate of \$300 reasonable  
6 based on his experience, work quality, and quantity of necessary papers filed with the  
7 Court. (ECF No. 102.) Although many of these hours were spent after the case was  
8 dismissed, these hours were spent in connection with the sanction hearings—time well  
9 spent. Similarly, the attorney's fees and costs incurred by Ranallo also appear  
10 reasonable.

11 Therefore, the Court awards attorney's fees and costs in the sum of \$40,659.86  
12 to Doe: \$36,150.00 for Pietz's attorney's fees; \$1,950.00 for Ranallo's attorney's fees;  
13 \$2,226.26 for Pietz's costs; and \$333.60 for Ranallo's costs. As a punitive measure,  
14 the Court doubles this award, yielding \$81,319.72.<sup>5</sup> This punitive multiplier is  
15 justified by Plaintiffs' brazen misconduct and relentless fraud. The Principals, AF  
16 Holdings, Ingenuity 13, Prenda Law, and Gibbs are liable for this sum jointly and  
17 severally, and shall pay this sum within 14 days of this order.

18 Second, there is little doubt that that Steele, Hansmeier, Duffy, Gibbs suffer  
19 from a form of moral turpitude unbecoming of an officer of the court. To this end, the  
20 Court will refer them to their respective state and federal bars.

21 Third, though Plaintiffs boldly probe the outskirts of law, the only enterprise  
22 they resemble is RICO. The federal agency eleven decks up is familiar with their  
23 prime directive and will gladly refit them for their next voyage. The Court will refer  
24 this matter to the United States Attorney for the Central District of California. The  
25 will also refer this matter to the Criminal Investigation Division of the Internal  
26

27 <sup>4</sup> They appeared on behalf of the Doe Defendant in the case *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-  
8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012).

28 <sup>5</sup> This punitive portion is calculated to be just below the cost of an effective appeal.



1 Revenue Service and will notify all judges before whom these attorneys have pending  
2 cases. For the sake of completeness, the Court requests Pietz to assist by filing a  
3 report, within 14 days, containing contact information for: (1) every bar (state and  
4 federal) where these attorneys are admitted to practice; and (2) every judge before  
5 whom these attorneys have pending cases.

6 4. *Local Rule 83-3 sanctions*

7 For the same reasons stated above, the Court will refer Duffy and Gibbs to the  
8 Standing Committee on Discipline (for this District) under Local Rule 83-3.

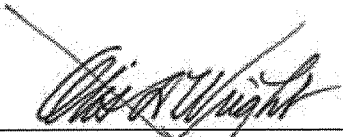
9 **V. CONCLUSION**

10 Steele, Hansmeier, Duffy, Gibbs, Prenda Law, AF Holdings, and Ingenuity 13  
11 shall pay, within 14 days of this order, attorney's fees and costs totaling \$81,319.72 to  
12 Doe. The Court enters additional nonmonetary sanctions in accordance with the  
13 discussion above.

14 **IT IS SO ORDERED.**

15 May 6, 2013

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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**

# Exhibit J

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johnsteele@gmail.com

*In Propria Persona*

Fee paid  
FILED  
CLERK, U.S. DISTRICT COURT  
MAY 17 2013  
CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INGENUITY 13 LLC,

*Plaintiff,*

v.

JOHN DOE,

*Defendant.*

CASE NO. 2:12-CV-8333-ODW (JCx)

Judge: Hon. Otis D. Wright, II  
Magistrate Judge: Hon. Jacqueline Chooljian

**JOHN STEELE'S NOTICE OF APPEAL  
AND REPRESENTATION STATEMENT**

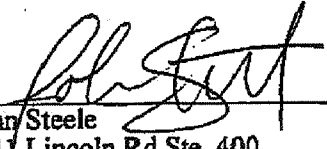
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**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that John Steele hereby appeals to the United States Court of Appeals for the Ninth Circuit from: (1) the Court's May 6, 2013 Order Issuing Sanctions (ECF No. 130), attached as Exhibit A; (2) the Court's Order Granting Request for Leave to File a Reply (ECF No. 116) attached as Exhibit B; (3) the Court's March 14, 2013 Order to show cause (ECF No. 86) (amending and incorporating ECF No. 48) attached as Exhibit C; and (4) the Court's Order to appear (ECF No. 66) attached as Exhibit D.

Respectfully submitted,

DATED: May 17, 2013

  
\_\_\_\_\_  
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