

No. 13-55859 (Lead Appeal)

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

INGENUITY 13 LLC,

Plaintiff-Appellant,

and

PAUL HANSMEIER, Esquire, *et al.*,

Movants-Appellants,

v.

JOHN DOE,

Defendant-Appellee,

Consolidated With Appeal Nos.:

13-55880; 13-55881; 13-55882;

13-55883; 13-55884; 13-56028

Related Appeal No.:

13-80114

Memorandum Decision, June 10, 2016

Before: PREGERSON, TALLMAN, and
NGUYEN, Circuit Judges

**JOHN DOE'S REQUEST FOR ATTORNEYS' FEES ON APPEAL
AND MOTION FOR FEES AS DAMAGES**

Appeals From Order Awarding Sanctions And Order Setting Bond By
The United States District Court For The Central District Of California
Honorable Otis D. Wright, II, Case No. 2:12-cv-8333-ODW-JCx

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Attorneys for Defendant-Appellee JOHN DOE

REQUEST FOR ATTORNEYS' FEES AND MOTION

Defendant-Appellee John Doe hereby requests attorneys' fees on appeal per Federal Rule of Appellate Procedure ("FRAP") 39 and Circuit Rule 39-1.6, or, in the alternative, moves for recovery of attorneys' fees on appeal as damages pursuant to FRAP 38.

The grounds for this request are: (i) generally, a party who successfully defends fees awarded in the district court will be entitled to a fee award on appeal. *See, e.g., Legal Voice v. Stormans Inc.*, 757 F3d 1015, 1016-1017 (9th Cir. 2014); *cf.* Memorandum Decision at 11-12, and (ii) as the "prevailing party," Doe is entitled to discretionary attorneys' fees taxed as costs pursuant to 17 U.S.C. § 505 and FRAP 39(a)(2). *See CRST Van Expedited, Inc. v. EEOC*, 578 U.S. ___, No. 14-1375 (slip op. May 19, 2016) at pp. 11-16.

In the alternative, (iii) John Doe moves for attorneys' fees on appeal on the ground that these consolidated appeals were both frivolous in certain respects, and were frivolously argued, pursuant to FRAP 38, FRAP 10, and FRAP 28(a). *See Sekiya v. Gates*, 508 F.3d 1198, 1200 (9th Cir. 2007); *Romala Corp. v. United States*, 927 F.2d 1219, 1222 (Fed. Cir. 1991).

The Court's memorandum decision deciding these appeals was filed June 10, 2016 (Dkt. No. 56-1) (the "Memorandum Decision") such that this request, which is being filed within 14-days thereof, is timely. *See* Circuit Rule 39-1.6(a) and (b)(3).

This request is accompanied by the following supporting documentation:

- Declaration of Morgan E. Pietz re: Fees, which attests to the accuracy of the fee request information.
- Exhibit 1 – Completed Form 9.
- Exhibit 2 – Pietz Law Firm Billing Statement Through 3/31/14.
- Exhibit 3 – Pietz Law Firm Billing Statement From 4/1/14 to Present.
- Exhibit 4 – Laffey Matrix.
- Exhibit 5 – Email correspondence with Daniel Voelker re: Presentation of Factual Record Below.

A bill of costs is being separately filed using Form 10. Only single costs are requested pursuant to FRAP 39(a)(2), not double costs per FRAP 38.

Respectfully Submitted,

THE PIETZ LAW FIRM

DATED: June 15, 2016

BY: /s/ Morgan E. Pietz

*Attorney for Defendant-Appellee
JOHN DOE*

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MEMORANDUM

In the part of the Memorandum Decision affirming the district court's order requiring the Appellants¹ to post a bond sufficient to cover attorneys' fees on appeal, this Court stated,

“The district court had the inherent authority to sanction litigants in the form of a bond for projected appellate attorney's fees and costs for bad-faith conduct. *See Chambers*, 501 U.S. at 50.² Considering the magnitude of the Prenda Principals' misdeeds, and the covert nature of their businesses, the district court did not abuse its discretion by increasing the bond amount. Without hope of receiving attorney's fees for defending sanctions on appeal, Doe and other victims of abusive litigation would be left with no remedy. Doe would likely not defend the sanctions in appellate court, and thus would lose the only compensation—attorney's fees at the district court level—that he was awarded.”

Memorandum Decision at 11-12. With the result below having been affirmed in all respects, prevailing appellee John Doe now respectfully requests that the Court decide the related question and actually award attorneys' fees on appeal.

(a) Fees on Appeal Generally Awarded When Fees Were Awarded Below

The foregoing reasoning as to the propriety of Appellants being made to bond attorneys' fees on appeal echoes this Court's prior decision in *Voice v. Stormans Inc.*, 757 F.3d 1015, 1016 (9th Cir. 2014), which stated,

¹ The Appellants, each of whom originally filed a separate appeal, hence the different case numbers on appeal, are Paul Hansmeier, John Steele, Paul Duffy, Prenda Law, Inc., Ingenuity 13, LLC, and AF Holdings, LLC (together, the “Prenda Parties”). During the pendency of this appeal, appellee Paul Duffy passed away (Dkt. No. 53).

² *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991).

Generally, a party that is entitled to an award of attorneys' fees in the district court is also entitled to an award of attorneys' fees on appeal. *See, e.g., Stewart v. Gates*, 987 F.2d 1450, 1454 (9th Cir.1993) (noting that appellate attorneys' fees may be awarded under 42 U.S.C. § 1988's fee-shifting provision to a party that successfully defends an award on appeal); *Planned Parenthood of Cent. & N. Ariz. v. Arizona*, 789 F.2d 1348, 1354 (9th Cir.1986) (awarding attorneys' fees on appeal under § 1988 when the plaintiff won on the merits in the district court and on appeal). ***We have no trouble applying this general rule here, when the very purpose of the appeal was to establish the entitlement to fees.*** *See Orange Blossom P'Ship v. S. Cal. Sunbelt Developers, Inc. (In re S. Cal. Sunbelt Developers, Inc.)*, 608 F.3d 456, 462–65 (9th Cir.2010) (noting that in statutory fee cases, federal courts have uniformly held that attorneys are entitled to be compensated for the time reasonably spent establishing their right to the fee) [(“*Orange Blossom*”)]; *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 981 (9th Cir.2008) (“This is so because it would be inconsistent to dilute a fees award by refusing to compensate attorneys for the time they reasonably spent in establishing their rightful claim to the fee.”).

Voice, 757 F.3d at 1016-17 (emphasis added).

Since “the very purpose of the appeal” here was to establish whether or not Doe was entitled to recover his fees as a result of bad faith litigation conduct below, the general rule should apply. *See Voice*, 757 F.3d at 1016-17; *cf. Orange Blossom*, 608 F.3d at 462-65. This reasoning applies even though the basis for the fee award below was bad faith litigation, rather than a fee shifting statute. To hold otherwise, as this Court rightly noted, would create a practical problem where victims of abusive litigation who were awarded attorneys' fees below would be unlikely to defend such awards on appeal. Memorandum Decision at 12.

(b) John Doe is the Prevailing Party Because The Prenda Parties' Claim Was Rebuffed

As noted in Doe's fourth citation of supplemental authorities (Dkt. No. 54), the U.S. Supreme Court recently held that a party need not necessarily have obtained a judgment on the merits in order to be considered a "prevailing party" for purposes of a federal fee shifting statute. See *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. ___, No. 14-1375 (slip op. May 19, 2016) ("*CRST Van*") at pp. 11-16. There, the Eighth Circuit had held that the defendant CRST Van was not a prevailing party because the district court's dismissal of plaintiff EEOC's claims on behalf of certain female employees for failure to investigate or conciliate "was not a ruling on the merits." *Id.* at 11. The Supreme Court reversed and held that "that a defendant need not obtain a favorable judgment on the merits in order to be a 'prevailing party.'" *Id.* The High Court explained,

"Common sense undermines the notion that a defendant cannot 'prevail' unless the relevant disposition is on the merits. Plaintiffs and defendants come to court with different objectives. A plaintiff seeks a material alteration in the legal relationship between the parties.³ A defendant seeks to prevent this alteration to the extent it is in the plaintiff's favor. The defendant, of course, might prefer a judgment vindicating its position regarding the substantive merits of the plaintiff's allegations. The defendant has, however, fulfilled its primary objective whenever the plaintiff's challenge is rebuffed, irrespective of the precise reason for the

³ Here the Court is discussing the standard from cases such as *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U. S. 598, 602-603, and n. 4 (2001) and *Texas State Teachers Assn. v. Garland Independent School Dist.*, 489 U. S. 782, 789 (1989).

court's decision. The defendant may prevail even if the court's final judgment rejects the plaintiff's claim for a nonmerits reason."

CRST Van, at 12. The EEOC had further argued that a defendant could only be considered as prevailing if it had obtained a *preclusive* judgment, but the Supreme Court declined to decide that issue on the record before it. *Id.* at 14-16.

Here, the instant appeals arise out of cases brought by the Appellants under the Copyright Act, which is a federal fee shifting statute insofar as it allows for the discretionary award of attorneys' fees as costs to the prevailing party. *See* 17 U.S.C. § 505.⁴ "Congress has included the term 'prevailing party' in various fee-shifting statutes, and it has been the Court's approach to interpret the term in a consistent manner." CRST Van, at 2.

Accordingly, under CRST Van, this Court could conclude that John Doe is a "prevailing party" for purposes of the litigation below because Appellants' attempt to alter the status quo in their favor was "rebuffed." And if John Doe is thus considered a prevailing party, he may recover his attorneys' fees as costs, which means there is a statutory basis for awarding attorneys' fees on appeal, as costs, per FRAP 39.

⁴ "In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, ***the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.***" (emphasis added).

(c) **The Appeal Was Frivolous Insofar as it Challenged the Factual Findings of the District Court Without Citing to the Relevant Evidence Below**

Aside from the bad faith below, and the statutory basis for awarding attorneys' fees as costs, this Court also "has discretion to award double costs and attorney's fees as a penalty for bringing a frivolous appeal. . . .A frivolous appeal is defined as one in which the result is obvious, or where the appellants' claims are utterly meritless."

Harrah's Club v. Van Blitter, 902 F.2d 774, 777 (9th Cir. 1990); citing FRAP 38;⁵ and *Int. Un. of Bricklayers etc. v. Martin Jaska, Inc.*, 752 F.2d 1401, 1406 (9th Cir.1985).

Further, "Even in cases in which genuinely appealable issues may exist, so that the taking of an appeal is not frivolous, the appellant's misconduct in arguing the appeal may be such as to justify holding the appeal to be 'frivolous as argued.'" *Romala Corp. v. United States*, 927 F.2d 1219, 1222 (Fed. Cir. 1991).

Here, the appeal was both frivolous in certain respects, and frivolously argued insofar as it challenged the factual findings of the district court without citing to any of the relevant portions of the record that supported those findings.

With respect to the Record on Appeal, FRAP 10 provides, in relevant part,

"Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion."

FRAP 10(b)(2). Similarly, FRAP 28(a) requires that an appellant's brief include,

⁵ "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee."

“a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e)).”

FRAP 28(a)(6).

Appellants argued to this Court that “the record on appeal is devoid of any information from which the District Court could reasonably infer that the individual Appellants were real parties in interest.” Opening Br. at 26. That statement was false and the argument frivolous. *See* Memorandum Decision at 8. By adopting the distinctive posture of the ostrich, Appellants forced John Doe to assume primary responsibility for explicating all of the evidence “relevant” to the district court’s factual findings. Had Appellants appropriately included the relevant evidence below, as required, and then explained why they disagreed with it, or it was inadmissible, or it should not be credited, etc., they could perhaps have pursued a non-frivolous appeal. But, as argued, the appeal was frivolous, and unnecessarily laborious for John Doe. *See Romala Corp.*, 927 F.2d at 1222.

In *Sekiya v. Gates*, 508 F.3d 1198, 1200 (9th Cir. 2007), this Court struck appellant’s non-conforming brief and dismissed her appeal when she had purported to challenge a district court’s ruling on summary judgment merely “by asserting that ‘Plaintiff–Appellant disagrees’ and by providing this court with a list of asserted facts without adequate citation to the record,” and without explaining how the asserted facts

contradicted the district court's conclusion, among other issues. Here, the Appellants did not even do that; they just ignored the relevant facts altogether.

Compounding the frivolousness of Appellants' arguments is the fact that they were specifically cautioned against doing exactly what they later then did. On October 20, 2013, before opening briefs were due, counsel for John Doe emailed newly-appeared appellate counsel for the Prenda Parties, Daniel Voelker, about a few matters,

“Don't take this next comment the wrong way, as I truly do offer it in the spirit of professional courtesy: If you are contemplating signing your name to any arguments in the appellate brief, which your clients may be urging on you, to the effect of 'there is no evidence in the record of X,' I would encourage you to be careful about that. If I was you, I would make sure to look at all of the many exhibits below (not just the ones from the hearing) before I sign something like that. And if you would like to discuss any of those issues, or any other aspect of the case before you file your brief, please feel free to give me a call.”

Exhibit 5. To that, Mr. Voelker responded,

“ . . . Please keep in mind that I will not be intimidated, especially by you. I have been litigating cases for almost 28 years.

If I even mildly feel like you are trying to intimidate me or my firm, I will report you to the Courts (every one of them) that you appear before, the Courts where you are licensed to practice as well as to the United States Attorneys in the appropriate jurisdictions, [sic]
Play by the rules.

Have a good day and do not ever contact me again unless you have the legal right to do so.

Dan”

Id. More important than the bombast, is the fact that Appellants ignored the warning and then did in fact argue that there was “no evidence in the record” to support the

district court's alter ego findings, when that was plainly incorrect.

Accordingly, as a sanction for the frivolous nature their appeals, Appellants should be assessed attorneys' fees on appeal as just damages per FRAP 38. *See Harrah's Club*, 902 F.2d at 777; *Romala Corp.*, 927 F.2d at 1222; *Sekiya*, 508 F.3d at 1200. If the Court awards attorneys' fees under either of the two other grounds being advanced, it need not reach this issue because double costs are not being sought; only single costs and attorneys' fees.

(d) Amount of Attorneys' Fees Requested is Appropriate

As set forth in Form 9, which is attached as Exhibit 1, the total amount of attorneys' fees requested is \$65,611. All of that is for time billed by Morgan Pietz, who represented John Doe both below and before this Court.

Detailed, itemized billing statements from The Pietz Law Firm are attached as Exhibits 2 and 3. The billing statements cover the periods before and after April 1, 2014. Between April 1, 2013 and March 31, 2014, Mr. Pietz's standard billing rate was \$325 per hour, during which time a total of 152.7 hours were billed by him, for a total of \$49,627.50 as reflected in Exhibit 2. Pietz Decl. ¶ 3. After April 1, 2014, Mr. Pietz's standard billing rate was increased to \$360 per hour, and since then 44.4 hours have been billed by him, for a total of \$15,984.00, as reflected in Exhibit 3. Pietz Decl. ¶ 4. In February of 2015, Mr. Pietz began winding down his solo practice, and joined Gerard Fox Law, P.C. as an of counsel attorney. Pietz Decl. ¶ 8. At the new firm, Mr. Pietz's standard rate is currently \$575 per hour. *Id.* Nevertheless, all of Mr. Pietz's

time for these appeals billed after April 1, 2014 is charged at the older, sole practitioner rate of \$360 per hour, notwithstanding the fact that Mr. Pietz's hourly rate subsequently increased twice during the pendency of this appeal (once in 2015, and again in 2016).

Id.

The hourly rates being sought here are legally justified for attorneys of comparable experience, as shown by the Adjusted Laffey Matrix⁶ attached as Exhibit 4. At the high end, for a lawyer with 4-7 years experience during the period June 2015-16, the Laffey Matrix shows a rate of \$406 per hour. Exhibit 4. On the low end, for a lawyer with 4-7 years of experience during the period June 2012-13, the Laffey Matrix shows a rate of \$383. *Id.* Accordingly, the rates being requested here of \$325 and \$360 per hour, are well within if not actually slightly below the appropriate range for attorneys of comparable experience. Further, although the original Laffey Matrix surveys rates for the DC metropolitan area, rates for Los Angeles tend to be slightly higher. *See, e.g., Garnes v. Barnhardt*, No. C 02-4428 VRW, 2006 WL 249522, at *7 (N.D. Cal. Jan. 31, 2006) (adjusting DC Laffey Matrix rates upward for Los Angeles attorneys); *see also In re HPL Technologies, Inc. Sec. Litig.*, 366 F. Supp. 2d 912 (N.D. Cal. 2005) (adjusting DC Laffey Matrix rates upward for Bay area attorneys using same methodology).

⁶ The "Adjusted" Laffey Matrix refers to the version published at <http://www.laffeymatrix.com/see.html>, wherein a PhD economist has adjusted the original U.S. Attorneys' Office figures annually to account for inflation as measured by the Legal Services Component of the Consumer Price Index.

The hours requested were reasonably expended, in view of the factually intensive nature of this appeal, and the various legal issues presented. As noted above, the failure of Appellants to properly cite to relevant evidence below compounded the time John Doe then had to spend properly explaining the record. As shown on Form 9, very little time was spent on conferences (only 2.7 hours) and no time whatsoever was charged for obtaining and reviewing records, since they were already in the possession of undersigned counsel. 37.4 hours for legal research is not unreasonable in view of the many legal issues presented. And 119.4 hours on the briefing also was not unreasonable under the circumstances. Finally, the 16.5 hours charged as “Other,” which includes only one hour for this motion and related costs bill, as well as preparation of four citations to supplemental authority, and certain other motion practice, including responding to Gibbs’ motion for indicative ruling, was all justified.

Thus, the lodestar amount, as calculated in Exhibits 2 and 3, which multiply reasonably hourly rates by hours reasonably expended, comes out to a total of \$65,611. “The lodestar amount is presumptively the reasonable fee amount, and thus a multiplier may be used to adjust the lodestar amount upward or downward only in ‘rare’ and ‘exceptional’ cases, supported by both ‘specific evidence’ on the record and detailed findings by the lower courts’ that the lodestar amount is unreasonably low or unreasonably high.” Van Gerwen v. Guarantee Mut. Life Co., 214 F. 3d 1041, 1045 9th

Cir. 2000). For the sake of expediency, John Doe declines to ask for a multiplier of attorneys' fees on appeal.

Accordingly, for the foregoing reasons, the Court is respectfully requested to award attorneys' fees on appeal, payable jointly and severally by the Prenda Parties to counsel for John Doe, in the amount of \$65,611, or in such other amount as this Court, the Appellate Commissioner, or the District Court on a limited remand for that purpose may deem just and proper.

Respectfully Submitted,

THE PIETZ LAW FIRM

DATED: June 15, 2016

BY: /s/ Morgan E. Pietz

*Attorney for Defendant-Appellee
JOHN DOE*

Lead Appeal No. 13-55859

Consolidated Case Nos.:
13-55880; 13-55881; 13-55882; 13-55883; 13-55884; 13-56028

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing **JOHN DOE'S REQUEST FOR ATTORNEYS' FEES ON APPEAL AND MOTION FOR FEES AS DAMAGES** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on

June 15, 2016

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Morgan E. Pietz

Morgan E. Pietz
Attorney for Defendant-Appellee,
JOHN DOE

No. 13-55859 (Lead Appeal)

**UNITED STATES COURT OF APPEALS
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INGENUITY 13 LLC,

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13-80114

Memorandum Decision, June 10, 2016

Before: PREGERSON, TALLMAN, and
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**DECLARATION OF MORGAN E. PIETZ RE: FEES
EXHIBITS 1 to 5**

Appeals From Order Awarding Sanctions And Order Setting Bond By
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Honorable Otis D. Wright, II, Case No. 2:12-cv-8333-ODW-JCx

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Attorneys for Defendant-Appellee JOHN DOE

DECLARATION OF MORGAN E. PIETZ

I, Morgan E. Pietz am over the age of 18, have personal knowledge of the facts alleged herein, and hereby declare as follows:

1. I am a member in good standing of the State Bar of California, duly admitted to the practice of law in the state and federal courts of the State of California. I am counsel on appeal for appellee-defendant John Doe in these consolidated appeals.

2. Attached hereto as Exhibit 1 is a true and accurate Form 9, wherein I tallied the total number of hours spent on the specified categories.

3. Attached hereto as Exhibit 2 is a true and accurate copy of a billing statement from my former law firm showing my time entries for time I actually expended in defending these consolidated appeals up to and including March 31, 2014. During this period, my standard hourly rate at The Pietz Law Firm was \$325 per hour.

4. Attached hereto as Exhibit 3 is a true and accurate copy of a billing statement from my former law firm showing my time entries for time I actually expended in defending these consolidated appeals on and after April 1, 2014. During this period, my standard hourly rate at The Pietz Law Firm increased to \$360 per hour, and later increased again to \$375 per hour.

5. Attached hereto as Exhibit 4 is a true and accurate copy of what is called the Adjusted Laffey Matrix, made available online at

<http://www.laffeymatrix.com/see.html>

6. Attached hereto as Exhibit 5 is a true and accurate copy of an email exchange I had with Appellants' appellate counsel Daniel Voelker on or around October 20, 2013.

7. In February of 2015, I joined Gerard Fox Law, P.C., of counsel. I had previously raised my rates at The Pietz Law Firm to \$375 per hour. When I joined the new firm, which does high end trial work in the IP and entertainment space, my standard rate went up to \$575 per hour. My new firm has approximately 25 lawyers in Century City, CA and 6 in Manhattan, NY. However, this case is one of the few remaining active matters that I did not transition over to the new firm, so I felt it would be more appropriate to charge my time at my old rate of \$360 per hour, even for work done this year.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully Submitted,

THE PIETZ LAW FIRM

DATED: June 15, 2016

BY: /s/ Morgan E. Pietz

*Attorney for Defendant-Appellee
JOHN DOE*

Lead Appeal No. 13-55859

Consolidated Case Nos.:

13-55880; 13-55881; 13-55882; 13-55883; 13-55884; 13-56028

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing **DECLARATION OF MORGAN E. PIETZ RE: FEES**, as well as **EXHIBITS 1 to 5** hereto, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on

June 15, 2016

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Morgan E. Pietz

Morgan E. Pietz
Attorney for Defendant-Appellee,
JOHN DOE

EXHIBIT 1

Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. Box 193939
San Francisco, California 94119-3939

Molly C. Dwyer
Clerk of Court

(415) 355-8000

Form 9: APPLICATION FOR ATTORNEYS FEES
Under Ninth Circuit Rule 39-1.6

9th Cir. No. Case Name: v.

DESCRIPTION OF SERVICES

HOURS

Interviews & Conferences	<input type="text" value="2.7"/>
Obtaining & Reviewing Records	<input type="text" value="0"/>
Legal Research	<input type="text" value="37.4"/>
Preparing Briefs	<input type="text" value="119.4"/>
Preparing for & Attending Oral Argument	<input type="text" value="21.1"/>
Other (specify below):	<input type="text" value="16.5"/>

Correspondence to opposing counsel regarding record; response to motion for indicative ruling; prepare and file streamlined request for extension; contacts with clerk's office regarding status of motion to extend page limit and briefing; preparation and filing of four citations to supplemental authorities; review of Seventh Circuit decision involving same parties (all as specified in accompanying billing statements).

TOTAL Hours Claimed

TOTAL COMPENSATION REQUESTED: \$

Signature

Date

A request for an award of attorneys fees must be supported by a memorandum showing that the party seeking fees is legally entitled to them and must be accompanied by Form 9 or a document that contains substantially the same information, along with:

- (1) a detailed itemization of the tasks performed each date and the amount of time spent by each lawyer and paralegal on each task;
- (2) a summary for each lawyer and paralegal of the total hours spent in the categories set forth above;
- (3) a showing that the hourly rates claimed are the prevailing rates in the relevant market; and
- (4) an affidavit attesting to the accuracy of the information submitted.

EXHIBIT 2



The Pietz Law Firm
3770 Highland Ave., Ste. 206
Manhattan Beach, CA 90266

Invoice submitted to:

Ingenuity 13 - C.D. Cal. - 12-cv-8333

Invoice #	20425
Invoice Date	06/13/2016
For Services Through	03/31/2014
Terms:	N/A

<u>Date</u>	<u>By</u>	<u>Service Summary</u>	<u>Hours/Rate</u>	<u>Amount</u>
In Reference To: Consolidated Appeals to Ninth Circuit (Legal Services)				
10/20/2013	MP	<i>Legal Services</i> Prepare correspondence to new outside opposing counsel offering to answer any questions he might have about factual record below	0.40 at \$ 325.00/hr	\$ 130.00
10/21/2013	MP	<i>Legal Services</i> Leave phone message and prepare correspondence to appellate advisor regarding inclusion of facts from parallel proceeding and motion for indicative ruling	1.30 at \$ 325.00/hr	\$ 422.50
11/01/2013	MP	<i>Legal Services</i> Prepare caption shell for use in brief; draft response to motion for indicative ruling	1.00 at \$ 325.00/hr	\$ 325.00
11/04/2013	MP	<i>Legal Services</i> Prepare response to Gibbs' notice and request to Ninth Circuit	3.80 at \$ 325.00/hr	\$ 1,235.00
11/18/2013	MP	<i>Legal Services</i> Review opening brief on appeal; review So. Cal. Sunbelt; Cooter & Gell; and Lockary re: "fees on fees" and "fees on sanctions"	5.60 at \$ 325.00/hr	\$ 1,820.00
12/04/2013	MP	<i>Legal Services</i> Prepare correspondence to appellate advisor regarding standard for frivolity and sanctions regarding misrepresenting the factual record on appeal; coordinate telephonic conference for later in the week	0.30 at \$ 325.00/hr	\$ 97.50
12/06/2013	MP	<i>Legal Services</i> Telephone conference with appellate counsel regarding briefing	0.50 at \$ 325.00/hr	\$ 162.50
12/07/2013	MP	<i>Legal Services</i> Review opening brief; read In re Deville (9th Circuit opinion); read In re Deville (BAP opinion); research subsequent authorities citing to and distinguishing In re Deville	3.20 at \$ 325.00/hr	\$ 1,040.00
12/08/2013	MP	<i>Legal Services</i> Review Chambers, FJ Hanshaw and shepardize; research law regarding distinction between civil and criminal sanctions	4.20 at \$ 325.00/hr	\$ 1,365.00
12/09/2013	MP	<i>Legal Services</i> Review Bagwell and Mackler Prods.; research cases from other circuits involving due process in civil sanctions; outline answering brief	3.00 at \$ 325.00/hr	\$ 975.00
12/10/2013	MP	<i>Legal Services</i> Marshal case law for answering brief; prepare draft statement of issues on appeal	6.00 at \$ 325.00/hr	\$ 1,950.00
12/11/2013	MP	<i>Legal Services</i> Review in detail appellants' statement of the case; outline answering brief and begin drafting statement of the case	9.00 at \$ 325.00/hr	\$ 2,925.00

12/12/2013	MP	<i>Legal Services</i> Prepare statement of the case	12.00 at \$ 325.00/hr	\$ 3,900.00
12/13/2013	MP	<i>Legal Services</i> Prepare statement of case; review and summarize OSC responses and AF Holdings 30(b)(6) deposition	7.30 at \$ 325.00/hr	\$ 2,372.50
12/15/2013	MP	<i>Legal Services</i> Research Iodestar fee enhancement; research punitive damages; prepare summary of argument	10.00 at \$ 325.00/hr	\$ 3,250.00
12/16/2013	MP	<i>Legal Services</i> Finalize summary of argument; prepare argument and outline remainder of brief	5.90 at \$ 325.00/hr	\$ 1,917.50
12/17/2013	MP	<i>Legal Services</i> Prepare argument section of brief	16.00 at \$ 325.00/hr	\$ 5,200.00
12/18/2013	MP	<i>Legal Services</i> Prepare and file streamlined request for extension; telephone conference with appellate advisor	4.10 at \$ 325.00/hr	\$ 1,332.50
12/21/2013	MP	<i>Legal Services</i> Review and summarize key cases on inherent authority sanctions	4.20 at \$ 325.00/hr	\$ 1,365.00
12/23/2013	MP	<i>Legal Services</i> Revise factual sections of opening brief; prepare section on DeVille and Dyer	3.60 at \$ 325.00/hr	\$ 1,170.00
12/30/2013	MP	<i>Legal Services</i> Review remaining cases cited in opening brief and the ones distinguishing them regarding inherent authority sanctions	1.20 at \$ 325.00/hr	\$ 390.00
01/14/2014	MP	<i>Legal Services</i> Prepare argument section of answering brief; select items for inclusion in supplemental excerpts of record	9.70 at \$ 325.00/hr	\$ 3,152.50
01/15/2014	MP	<i>Legal Services</i> Prepare answering brief including section on bond and conclusion; coordinate preparation of supplemental excerpts of record	11.40 at \$ 325.00/hr	\$ 3,705.00
01/16/2014	MP	<i>Legal Services</i> Coordinate preparation of supplemental excerpts of record; review same; revise brief	12.30 at \$ 325.00/hr	\$ 3,997.50
01/17/2014	MP	<i>Legal Services</i> Finalize and file excerpts of record; finalize and file brief; prepare and file request for judicial notice; prepare and file motion to exceed page limit	13.80 at \$ 325.00/hr	\$ 4,485.00
01/21/2014	MP	<i>Legal Services</i> Revise Supplemental Excerpts of Record per instructions from court	2.00 at \$ 325.00/hr	\$ 650.00
02/24/2014	MP	<i>Legal Services</i> Contact clerk's office regarding status of answering brief	0.20 at \$ 325.00/hr	\$ 65.00
02/25/2014	MP	<i>Legal Services</i> Review reply brief; contact procedural motions unit regarding status of motion and answering brief	0.70 at \$ 325.00/hr	\$ 227.50

Total Hours: 152.70 hrs
Total Legal Services: \$ 49,627.50
Total Invoice Amount: \$ 49,627.50

EXHIBIT 3



The Pietz Law Firm
3770 Highland Ave., Ste. 206
Manhattan Beach, CA 90266

Invoice submitted to:

Ingenuity 13 - C.D. Cal. - 12-cv-8333

Invoice #	20426
Invoice Date	06/13/2016
For Services Through	06/13/2016
Terms:	N/A

<u>Date</u>	<u>By</u>	<u>Service Summary</u>	<u>Hours/Rate</u>	<u>Amount</u>
In Reference To: Consolidated Appeals to Ninth Circuit (Legal Services)				
04/14/2014	MP	<i>Legal Services</i> Revise brief to fit within page limits provided per court's order granting motion to exceed page limit.	6.50 at \$ 360.00/hr	\$ 2,340.00
04/15/2014	MP	<i>Legal Services</i> Revise brief to fit within page limits provided per court's order granting motion to exceed page limit; revise section dealing with In re Deville and Dyer; finalize and coordinate filing of revised answering brief.	8.90 at \$ 360.00/hr	\$ 3,204.00
05/12/2014	MP	<i>Legal Services</i> Review cases and prepare and file citation of supplemental authorities re Supreme Court's recent decisions in Octane Fitness and Highmark, which deal with making it easier to award exceptional case attorneys' fees under patent law	3.60 at \$ 360.00/hr	\$ 1,296.00
08/08/2014	MP	<i>Legal Services</i> Review Lightspeed Media Corp. v. Smith, CA7 Appeal Nos. 13-3801 and 14-1682 (July 31, 2014) and prepare citation of supplemental authorities regarding same.	2.30 at \$ 360.00/hr	\$ 828.00
02/26/2015	MP	<i>Legal Services</i> Review hearing notice, check calendar, prepare and file acknowledgment of same	0.30 at \$ 360.00/hr	\$ 108.00
05/01/2015	MP	<i>Legal Services</i> Re-read all briefing carefully in preparation for oral argument	4.20 at \$ 360.00/hr	\$ 1,512.00
05/02/2015	MP	<i>Legal Services</i> Re-read the key cases cited in briefs in preparation for oral argument	6.20 at \$ 360.00/hr	\$ 2,232.00
05/03/2015	MP	<i>Legal Services</i> Prepare notecards on key issues and cases; try to anticipate questions and think through answers; conduct research on Fifth Circuit case that is a counter point to Orange Blossom; final preparations for oral argument	8.30 at \$ 360.00/hr	\$ 2,988.00
05/04/2015	MP	<i>Legal Services</i> Argue case to the Ninth Circuit; prepare and file third citation of supplemental authorities providing citations to additional cases discussed at argument	2.10 at \$ 360.00/hr	\$ 756.00
05/19/2016	MP	<i>Legal Services</i> Review CRST Van Expedited, Inc. v. EEOC, 578 U.S. ___, No. 14-1375 (slip op. May 19, 2016) and file fourth citation of supplemental authorities regarding Supreme Court's decision that a prevailing party need not necessarily obtain a judgment on the merits	1.00 at \$ 360.00/hr	\$ 360.00

06/11/2016	MP	<i>Legal Services</i>	1.00 at \$ 360.00/hr	\$ 360.00
		Prepare bill of costs and motion for attorneys' fees on appeal per		
		FRAP 38		

Total Hours: 44.40 hrs
Total Legal Services: \$ 15,984.00
Total Invoice Amount: \$ 15,984.00

EXHIBIT 4

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)
[Links](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 5



Morgan Pietz <morganpietz@gmail.com>

Ingenuity 13 Appeal to Ninth Circuit

Daniel J Voelker <daniel.voelker59@gmail.com>
 To: "Morgan E. Pietz" <mpietz@pietzlawfirm.com>
 Cc: Nicholas Ranallo <nick@ranallolawoffice.com>

Sun, Oct 20, 2013 at 7:50 PM

Morgan:

Thanks for your email. My name is Dan, not David, and to you Mr. Voelker.
 Please keep in mind that I will not be intimidated, especially by you.
 I have been litigating cases for almost 28 years.

If I even mildly feel like you are trying to intimidate me or my firm, I will report you to the Courts (every one of them) that you appear before, the Courts where you are licensed to practice as well as to the United States Attorneys in the appropriate jurisdictions,
 Play by the rules.

Have a good day and do not ever contact me again unless you have the legal right to do so.

Dan

Daniel J. Voelker
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 (C) 312-254-7666
 (F) 312-870-5431
dvoelker@voelkerlitigationgroup.com
www.voelkerlitigationgroup.com

On Oct 20, 2013, at 7:51 PM, "Morgan E. Pietz" <mpietz@pietzlawfirm.com> wrote:

David,

In view of your recent appearance on the appellate docket, I write to introduce myself. I represent the John Doe defendant in *Ingenuity 13 v John Doe*, 12-cv-8333, which, as you know, is presently on appeal from C.D. Cal. to the Ninth Circuit.

In case you didn't get word from your clients or from the media coverage, I want to make sure you saw Brett Gibbs' filing in the district court last week, since I don't believe you are on the docket there. As a courtesy, please find attached a copy of Mr. Gibbs' recent papers (minus Exhibit G, which is a large photo file that I will try to send that separately, but it may be too big for email).

Don't take this next comment the wrong way, as I truly do offer it in the spirit of professional courtesy: If you are contemplating signing your name to any arguments in the appellate brief, which your clients may be urging on you, to the effect of 'there is no evidence in the record of X,' I would encourage you to be careful

about that. If I was you, I would make sure to look at all of the many exhibits below (not just the ones from the hearing) before I sign something like that. And if you would like to discuss any of those issues, or any other aspect of the case before you file your brief, please feel free to give me a call.

Best regards,
Morgan

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Morgan E. Pietz
THE PIETZ LAW FIRM
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Manhattan Beach, CA 90266
mpietz@pietzlawfirm.com
Ph: (310) 424-5557
Fx: (310) 546-5301
www.pietzlawfirm.com

<240 - Main.pdf>

<240-1 - Memo of Ps and As.pdf>

<240-2 - Decl. of Brett Gibbs.pdf>

<240-3 - Exhibit A - Proposed Release Agreement.pdf>

<240-4 - Exhibit B - Proposed Indemnity Agreement.pdf>

<240-5 - Exhibit C - Warning Letter from Paul Duffy.pdf>

<240-6 - Exhibit D - Emails from John Steele Re Prenda Insurance Policy.pdf>

<240-7 - Exhibit E - Prenda Law Profit and Loss Detail 2012.pdf>

<240-8 - Exhibit F - Prenda OP Balance Sheet Detail Version 2012.pdf>

<240-10 - Proposed Order.pdf>