

ORIGINAL

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FILED
CLERK, U.S. DISTRICT COURT
MAR - 8 2013
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *AC*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 INGENUITY 13 LLC,
12 Plaintiff,
13 v.
14 JOHN DOE,
15 Defendant.

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

EX PARTE APPLICATION FOR
ORDER WITHDRAWING ORDER
FOR PETER HANSMEIER TO
APPEAR

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

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

16 RECEIVED BUT NOT FILED
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DEPUTY
BY 20

I.

INTRODUCTION

21 On March 5, 2013, this Court issued an order that eight individuals would
22 have to appear before this Court on March 11, 2013. But this Court lacks
23 jurisdiction to order those individuals to appear in that they reside outside
24 California, are not parties to this litigation, and do not represent parties to this
25 action.

26 Moreover, although some of these individuals may have received service of
27 the order as the Court ordered, the undersigned individual did not.
28

1 Further, the undersigned individual has not received a reasonable amount of
2 notice to accommodate cross-country travel or information regarding who will pay
3 for such travel. Based on these factors, the Court should withdraw its order for
4 Hansmeier to appear on Monday, March 11, 2013 at 1:30 P.M.

5 **II.**

6 **THE COURT LACKS PERSONAL JURISDICTION OVER THOSE IT HAS**
7 **ORDERED TO APPEAR**

8 Even where the Court seeks to adjudicate issues between parties, it must
9 have personal jurisdiction over them. Here, Hansmeier is not a party. As such, the
10 public policy behind the need to determine personal jurisdiction is arguably at an
11 elevated level because, as an individual, he effectively has “no dog in this fight.”

12 Ordinarily, federal courts do not have nationwide personal jurisdiction. With
13 few exceptions, they have no broader power over persons outside the state in
14 which they sit than do the local state courts. *Omni Capital Int’l, Ltd. v. Rudolph*
15 *Wolff & Co., Ltd.* (1987) 484 U.S. 97, 104-105.

16 Here, because his is not a party to this action, Hansmeier can be nothing
17 more than witnesses. California Code of Civil Procedure section 1989 provides
18 that “a witness . . . is not obliged to attend as a witness before any court, judge,
19 justice or any other officer, unless the witness is a resident within the state at the
20 time of service.” Hansmeier does not reside in California. Decl. of Hansmeier, ¶ 2.
21 Thus, the Court respectfully lacks jurisdiction to order him to appear.

22 **III.**

23 **HANSMEIER DID NOT RECEIVE REASONABLE NOTICE OF THIS**
24 **PROCEEDING**

25 Due process mandates that a respondent to a Rule 11 sanctions motion
26 receive reasonable notice of the sanctions being sought and the opportunity to
27 submit an opposition. Fed. R. Civ. P. 11(c)(1); *Miranda v. Southern Pac. Transp.*
28 *Co.*, 710 F.2d 516, 522 (9th Cir. 1983). This applies equally to sanctions imposed

1 sua sponte by the Court. So, before imposing sanctions, the Court must issue an
2 order to show cause why the respondent has not violated Rule 11 and allow the
3 party to be heard. Fed. R. Civ. P. 11(c)(3); *Simmerman v. Corino*, 27 F.3d 58, 64
4 (3rd Cir. 1994); *Marlin v. Moody Nat'l Bank, N.A.*, 533 F.3d 374, 379 (5th Cir.
5 2008).

6 Although the undersigned submitting this application has been unable to
7 identify any authority addressing the notice requirements to witnesses ordered to
8 appear at such hearings, logic dictates that such individuals should at least be
9 similarly accommodated with reasonable notice. Here, the Court's March 5, 2013
10 order that notice be provided by March 7, 2013 to attend a March 11, 2013 hearing
11 with no further information is fundamentally unreasonable.

12 As set forth above, Hansmeier resides out-of-state. He has a job that
13 demands his attendance on the upcoming Monday. As such, providing two to three
14 days' business notice that he needs to travel across the country for a hearing in a
15 case involving third-parties is inherently unreasonable in that it could adversely
16 impact his employment and he was never even formally served with the Court's
17 order.

18 Further, the notice that he appear was absent any information regarding the
19 reason for his appearance. Presumptively, it would be to provide testimony, but the
20 Court has issued no order identifying what the scope of that testimony might be.
21 Without such notice, the witness may not properly prepare and is, therefore,
22 deprived of due process.

23 Finally, witnesses are entitled not only to receive payment for his
24 attendance, but also for travel expenses. 28 U.S.C. § 1821 (2013). But, the Court's
25 order not only fails to provide who will compensate him for his time and these
26 expenses, but that he will be compensated at all. Given the considerable expense of
27 traveling such distances, especially on such short notice when many common
28 carriers may not have seats available, this is a significant issue.

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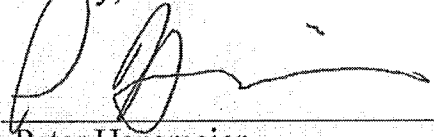
For these reasons, even if the Court had jurisdiction over Hansmeier, the notice would be unreasonable to him and the Court should, at a minimum, have to withdraw the order and issue a new one for a future date that would afford Mr. Hansmeier reasonable notice of the hearing, his rights, and the purpose for his appearance.

IV.
CONCLUSION

The Court does not have jurisdiction to order out-of-state resident Hansmeier to appear as witnesses at a hearing. And, even if it did, the notice that Court provided for Hansmeier to travel across the country was incomplete and inadequate. For these reasons, the Court should withdraw its March 5, 2013 order requiring him to appear in California on March 11, 2013.

Respectfully, Submitted

DATED: March 8, 2013

Bv: 
Peter Hansmeier
Specially Appearing *Pro Se*