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13 Specially Appearing for
 14 PAUL HANSMEIER

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

17 INGENUITY 13 LLC,
 18 Plaintiff,
 19 vs.
 20 JOHN DOE,
 21 Defendant.

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

Judge: Hon. Otis D. Wright, II
 Magistrate Judge:
 Hon. Jacqueline Chooljian
 Courtroom: 11
 Complaint Filed: 09-27-2012
 Trial Date: None Set

**SPECIALY APPEARING,
 PAUL HANSMEIER'S,
 RESPONSE TO ORDER TO
 SHOW CAUSE WHY
 SANCTIONS SHOULD NOT BE
 LEVIED**

DATE: April 2, 2013
TIME: 10:00 a.m.
CTRM: 11

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1 **1. INTRODUCTION**

2 At the April 2, 2013 order to show cause hearing, the court invited those
3 responding, including Paul Hansmeier (hereinafter “Respondent Hansmeier” or
4 “Hansmeier”), to either provide testimony in response or to exercise his Fifth
5 Amendment rights. When some of those appearing elected for the latter, the court
6 indicated that it would draw reasonable inferences and ended the hearing.

7 The reasonable inferences the court should draw against Hansmeier are
8 limited. As a preliminary matter, because of the criminal nature of these
9 proceedings where the court has both raised questions of fraud and potential
10 incarceration¹, Hansmeier’s invocation of the Fifth Amendment may not be used to
11 formulate presumptions against him.

12 Further, because the court initiated the proceedings, they are “akin to
13 contempt” proceedings, and conduct may be judged only in that light. That is, the
14 “reasonableness” of the respondents’ conduct is not at issue, only whether it was
15 contemptuous. *See Gonzales v. Texaco, Inc.*, 344 Fed. Appx. 304, 308-09 (9th Cir.
16 2009) (remanding to the district court for consideration whether the attorneys’
17 conduct was “akin to contempt,” given that the lower court instituted its sua sponte
18 Rule 11 sanctions on the basis of the “reasonableness” of the attorneys’ conduct).

19 The Supreme Court has made clear that an inference of guilt may not be
20 drawn from a defendant’s failure to testify about facts relevant to his case. *Griffin*
21 *v. California*, 380 U.S. 609 (1965). “Too many, even those who should be better
22 advised, view this privilege as a shelter for wrongdoers. They too readily assume
23 that those who invoke it are either guilty of crime or commit perjury in claiming
24 the privilege.” *Ullmann v. United States*, 350 U.S. 422, 426 (1956). Rather, “[t]he
25 privilege serves to protect the innocent who otherwise might be ensnared by

26
27 ¹ Court’s February 7, 2013, Order to Show Cause re Sanctions for Rule 11 and
28 Local Rule 83-3 Violations, 11:1-4; Court’s Order of March 14, 2013, re the Ex
Parte Application of John Steele, Paul Hansmeier, Paul Duffy, and Angela Van
Den Hemel, at pp. 1-3.

1 ambiguous circumstances.” Board of Higher Education, 350 U.S. 551, 557-558
2 (1956); *accord* Griffin v. California, *supra*, 380 U.S. at 618.

3 In Erdman v. Stevens, 458 F.2d 1205, 1209-10 (2d Cir. 1972), the Second
4 Circuit determined that:

5 A court's disciplinary proceeding against a member of its bar is comparable
6 to a criminal rather than to a civil proceeding. A lawyer is not usually
7 motivated solely by the prospect of monetary gain in seeking admission to
8 the bar or in practicing his chosen profession. However, it cannot be
9 disputed that for most attorneys the license to practice law represents their
10 livelihood, loss of which may be a greater punishment than a monetary fine.
11 See Bradley v. Fisher, 80 U.S. [13 Wall.] 335, 355, 20 L. Ed. 646 (1872);
12 Spevack v. Klein, 385 U.S. 511, 516, 87 S. Ct. 625, 17 L. Ed. 2d 574 (1967).
13 Furthermore, disciplinary measures against an attorney, while posing a threat
14 of incarceration only in cases of contempt, may threaten another serious
15 punishment -- loss of professional reputation. The stigma of such a loss can
16 harm the lawyer in his community and in his client relations as well as
17 adversely affect his ability to carry out his professional functions,
18 particularly if his branch of the law is trial practice. *Undoubtedly these
factors played a part in leading the Supreme Court to characterize
disbarment proceedings as being "of a quasi-criminal nature,"* In Re
Ruffalo, 390 U.S. 544, 551, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968). *Id.* At
1209-10 (Emphasis Added); *Cf.*, Lefkowitz v. Turley, 414 U.S. 70, 94
S.Ct.316 (1973) (State may not compel waiver of 5th Amendment privilege
by threat of loss of employment or livelihood).

19 The Court stated in no uncertain terms at the April 2, 2013 hearing that it
20 considered this matter to be focused on attorney misconduct and suggested during
21 the March 11, 2013 hearing that it suspected that respondents had committed fraud
22 on the Court. Accordingly, the Court may not draw negative inferences from the
23 respondents' invocation of their 5th Amendment rights.

24 Additionally, the evidence presented to the court is insufficient to justify
25 sanctions. Respondent Hansmeier was not a party to proceedings outside of the
26 April 2, 2013 proceeding, where no evidence was presented. There is simply no tie
27 between Hansmeier and the issues raised within the court's order to show case.
28 And the court should limit the inferences that it draws about Hansmeier's

1 culpability for the actions of a third-party attorney, like Gibbs, who was neither
2 employed nor supervised by Hansmeier in connection with this matter. (*See*, Mar.
3 11, 2013 Rep. Tr., pp. 17:23 – 18:6, attached as Exhibit “A” to the Declaration of
4 Phillip A. Baker).

5 **2. JURISDICTION**

6 As a preliminary matter, the ability to issue sanctions is not unlimited. The
7 court has indicated it is considering issuing sanctions under Rule 11 of the Federal
8 Rules of Civil Procedure, Local Rule 83-3, and its inherent powers. Sanctions
9 under each are restricted as follows as outlined in the brief filed on behalf of
10 Prenda Law, Inc., Paul Duffy, and Angela Van Den Hamel for which Respondent
11 Hansmeier hereby joins.

12 **a. Rule 11.**

13 Rule 11 authorizes a court to issue sanctions against an attorney or
14 unrepresented party who signs a “pleading, written motion, [or] other paper” that is
15 brought for any improper purpose or is not well grounded in fact, warranted by
16 existing law, or made in good faith. Thus, Rule 11 imposes an affirmative duty on
17 a party or counsel to investigate the law and facts before filing. Rachel v. Banana
18 Republic, Inc., 831 F.2d 1503, 1508 (9th Cir. 1987).

19 Here, Gibbs’ attempts to delegate his Rule 11 duties to the respondents by
20 testifying that certain respondents, including Hansmeier, acted as Gibbs’
21 supervising attorney. There are two major problems with Gibbs’ attempt. First,
22 Rule 11 duties are nondelegable. “Rule 11(b) recognizes a ‘nondelegable
23 responsibility’ for an attorney to ‘personally...validate the truth and legal
24 reasonableness of the papers filed,’ and ‘to conduct a reasonable factual
25 investigation.’” Feyko v. Yuhe Int’l, Inc., Dist. Ct. C.D. Cal. (March 5, 2013)
26 (citing Pavelic & LeFlore v. Marvel Entm’t Group, 493 U.S. 120, 126 (1989) and
27 Christian v. Mattel Inc., 286 F.3d 1118, 1127 (9th Cir. 2002)).
28

1 Second, Gibbs never indicated (until threatened with sanctions) that any
2 other persons played any role in the cases subject to the Order to Show Cause.
3 Gibbs' sworn testimony in a Florida proceeding on December 21, 2012, directly
4 contradicts his March 11, 2013 testimony. In the Florida proceeding, Gibbs'
5 testified, "In my role as 'Of Counsel,' I draft, file and litigate copyright lawsuits
6 for Prenda Law, Inc. in California." Gibbs further testified, "In my role as 'Of
7 Counsel,' I also advise and educate other attorneys working with Prenda Law, Inc.,
8 as well as Prenda Law's clients, generally on proceeding in lawsuits protecting the
9 rights of copyright holders in federal court." Gibbs further testified, "In my role as
10 an advisor and educator, I help Prenda Law, as well as their clients, retain counsel
11 to bring lawsuits in other states, and consult with the lead counsel on those cases as
12 the cases progress. I occasionally help lead counsel prepare documents including
13 motions and responses to facilitate counsels representing their clients. I do not act
14 as co-counsel on any cases in states where I do not have a license to practice law."
15 Listing the clients he had "advise[d] and educate[d]", Gibbs specifically identified
16 "AF Holdings LLC, and Ingenuity13 LLC." *See* Exhibit "B" to Declaration of
17 PAB in Support of Response to Order To Show Cause.

18 Whereas the 1993 Committee Notes on Amendments to Federal Rules of
19 Civil Procedure suggest that the court may likewise consider whether to order
20 sanctions against other attorneys in the firm, co-counsel, or the party personally,
21 those circumstances should be contemplated in cases where "substantial
22 restrictions" are imposed "on the discretion of individual attorneys." Here, Gibbs'
23 December 21, 2012 testimony established his broad discretion in drafting, filing
24 and litigating copyright lawsuits in California, advising Prenda Law's clients in
25 lawsuits and helping lead counsel across the United States prepare documents and
26 motions. If further questioned regarding these matters, Gibbs involvement as to
27 investigation, expenses, description of his role, and how he held himself as lead
28 counsel would have been divulged.

1 **b. Local Rule 83-3.**

2 Counsel for Hansmeier has been able to find but a single reference to Local
3 Rule 83-3 in any published opinion and joins in the brief filed on behalf of Prenda
4 Law, Inc., Paul Duffy, and Angela Van Den Hamel for which Respondent
5 Hansmeier hereby joins.

6 **c. Inherent Powers.**

7 As to inherent powers, here, there is simply no evidence that Hansmeier,
8 who did not employ Gibbs at Prenda Law, who had no supervisory authority over
9 Gibbs at Prenda Law, who never appeared in this case and who does not even live
10 in the State of California, had any malicious intent or otherwise acted in bad faith
11 regarding the activities that form the subject of this order to show cause. As such,
12 any sanctions under the Court's inherent powers would be inappropriate.

13 **3. THE COURT SHOULD NOT IMPOSE SANCTIONS AGAINST**
14 **PAUL HANSMEIER**

15 Through its various orders, the court has indicated that it is considering
16 issuing sanctions upon seven grounds. These are (1) the misappropriation of the
17 identity of Alan Cooper and filing lawsuits based on an invalid copyright
18 assignment, (2) violation of the court's order by failing to cease discovery efforts
19 based on information obtained through subpoenas, (3) alleging copyright
20 infringement without conducting a reasonable inquiry, (4) failing to notify the
21 court of all parties that have a financial interest in the outcome of litigation, (5)
22 misrepresenting the nature and relationship of individuals, (6) contravening this
23 court's March 5, 2013 order to appear, and (7) failing to appear *pro hac vice*. For
24 the following reasons, the court should decline to issue sanctions against
25 Hansmeier.

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1 **a. The Proceedings in the Order to Show Cause Hearing Against**
2 **Brett Gibbs Were Flawed.**

3 Respondent Hansmeier hereby joins section IVA of the brief filed on behalf
4 of Prenda Law, Inc., Paul Duffy, and Angela Van Den Hamel and does not restate
5 the arguments contained therein.

6 **b. Hansmeier Did Not Perpetrate a Fraud on the Court Because he**
7 **Neither Misappropriated the Identity of Alan Cooper nor did he**
8 **File Lawsuits Based on Invalid Copyright Assignments.**

9 Respondent Hansmeier hereby joins section IVB(1) of the brief filed on
10 behalf of Prenda Law, Inc., Paul Duffy, and Angela Van Den Hamel and does not
11 restate the arguments contained therein.

12 Further, there is no evidence that Hansmeier obtained or represented that the
13 signatures on the assignments over the name Alan Cooper were those of John
14 Steele's former caretaker, who bears that same name and who provided testimony
15 to the court. Likewise, the evidence suggests that Hansmeier played no role in the
16 acquisition of Cooper's signatures on the assignment agreements. Alan Cooper
17 testified that he never made even made contact with Hansmeier. (Transcript of
18 March 11, 2013 hearing at page 21, lines 16-17, attached as Exhibit A" to the
19 Declaration of Phillip A. Baker.). Given that there is no evidence that Hansmeier
20 ever met or communicated with Cooper, no reasonable inference may be drawn
21 that he was involved in the procurement of his signature or, in the alternative, the
22 signature of whoever executed the assignment on behalf of the assignee.

23 **c. Hansmeier Did Not Violate the Court's Order to Cease Discovery.**

24 There has simply been no evidence presented to the court that Hansmeier
25 was involved in any discovery in either 12-cv-06636 or 12-cv-06669 before or
26 after the court issued its October 19, 2012 discovery order. Outside of Gibbs'
27 testimony, there is no evidence that Gibbs instructed Hansmeier to instruct
28 Respondent Van Den Hemel to instruct Verizon to not comply with the subpoenas

1 issued months before the court's order to cease discovery efforts. Such an
2 instruction would be incompatible with Gibbs' earlier characterization of
3 Hansmeier as a supervising attorney; supervisory relationships are typically a one-
4 way street. Further, it would have been highly unusual for Gibbs to instruct
5 Hansmeier to serve the October 19, 2012 discovery order on Verizon when the
6 order itself contained no such instruction. In contrast, the December 20, 2012
7 discovery order did order service on the affected ISPs. In that instance, Gibbs
8 testified that he contacted Respondent Van Den Hemel directly via phone and e-
9 mail to ensure immediate service. There is no apparent reason why Gibbs, in one
10 instance, would claim to route his discovery orders through Hansmeier and, in a
11 separate instance, route his discovery orders through others. Gibbs' testimony
12 regarding his compliance with the October 19, 2012 discovery order lacks
13 consistency.

14 **d. Hansmeier Did Not Participate in the Pre-Suit or Pre-Naming**
15 **Investigations.**

16 Respondent Hansmeier hereby joins section IVB(3) of the brief filed on
17 behalf of Prenda Law, Inc., Paul Duffy, and Angela Van Den Hamel and does not
18 restate the arguments contained therein. There is no evidence that Hansmeier was
19 part of the investigative process leading up to the filing of claims or identification
20 of fictitiously named defendants – not any.

21 **e. Hansmeier Should not be Sanctioned for Failing to Advise the**
22 **Court of any Additional Parties That May Have a Financial**
23 **Interest in the Outcome of the Litigation Because There is no**
24 **Evidence of any Additional Parties with a Financial Interest in AF**
25 **Holdings and/or Ingenuity 13.**

26 Hansmeier did not file or cause to be filed a notice indicating interested
27 parties, and should not be sanctioned for Gibbs' conduct. Indeed, the duty to
28 disclose a financial interest is necessary for a single purpose, to allow the court to

1 determine whether it is necessary to disqualify or recuse itself. Local R. 7.1-1; *see*
2 *also* Form CV-30 (stating that “representations are made to the Court to evaluate
3 possible disqualification or recusal.”)

4 Here, given that the court has expressed a belief that the only persons with a
5 financial interest in the case are the attorneys who have appeared before the court
6 and the court has not transferred the matter, there apparently was no reason for
7 recusal or disqualification. Thus, the failure to provide such information would
8 have had no impact on the litigation or the efficiency of this court.

9 But, the only evidence given regarding the financial interests to AF Holdings
10 is that it is a limited liability company formed by Aisha Sargeant in May 2011 and
11 is wholly owned by a trust with no defined beneficiaries. (ECF 69-1, pp. 21:18-2,
12 38:22-39:15, 40:8-12.) There has been no evidence that Hansmeier has an
13 ownership interest in either AF Holdings or Ingenuity 13.²

14 **f. Hansmeier Should not be Sanctioned for Failing to Advise the**
15 **Court of Related Cases.**

16 There is simply no evidence that Hansmeier participated in the decision to
17 decline to file a notice of related cases. As there is no evidence before this Court
18 he did not determine whether to file or cause to be filed a notice of related cases,
19 he should not be sanctioned for Gibbs’ conduct.

20 Although this court has argued that it believes a number of cases were
21 clearly related because they involved the same plaintiffs and the same copyrighted
22 work, that opinion is not universally held by all courts. For example, on December
23 27, 2012, the Northern District of California issued an order concluding that none
24 of 25 cases filed by AF Holdings and Ingenuity were related to one another. Req.
25 Judicial Not., 12-cv-04976 ECF no. 15. The order was, in fact, a denial to deem

26 ² Although the court seems to be concerned that some attorneys may have a
27 financial interest in AF Holdings and/or Ingenuity 13, the reasoning for that
28 concern beyond a disqualification/recusal analysis has yet to be explained. There is
no ethical or legal bar to attorneys representing an entity in which they hold an
interest.

1 the cases related, not as this court has suggested multiple times, a denial of
2 consolidation.

3 **g. Hansmeier Should not be Sanctioned for Failing to Appear on**
4 **March 11, 2013 Because he made Himself Available to Specially**
5 **Appear, which was Confirmed to the Court, and the Court**
6 **Lacked the Authority and Jurisdiction to order him to Appear**
7 **Personally as a Witness.**

8 Respondent Hansmeier hereby joins section IVB(6) of the brief filed on
9 behalf of Prenda Law, Inc., Paul Duffy, and Angela Van Den Hamel and does not
10 restate the arguments contained therein.

11 On March 5, 2013, this Court issued an Order that eight individuals,
12 including Hansmeier, would have to appear before this court on March 11, 2013.
13 But this Court lacked jurisdiction to order those individuals to appear because they
14 resided outside California, were not parties to this litigation, had not appeared in
15 this action, and did not represent parties to this action.

16 Moreover, Hansmeier did not receive reasonable notice of the nature of the
17 proceedings he was ordered to appear in or what was expected of him besides his
18 appearance. In fact, the Order did not even require that the appearance had to be
19 personal rather than telephonic.

20 Further, Hansmeier received insufficient notice to accommodate cross-
21 country travel or information regarding who would pay for such travel. Rather, he
22 was not served until late Thursday, March 7, 2013, less than two business days
23 before the hearing. Based on these factors, the Court's Order for Hansmeier to
24 appear on Monday, March 11, 2013 at 1:30 P.M. was improper.

25 As such, on March 8, 2013, Hansmeier filed an ex parte application
26 requesting the Court to withdraw the Order, which the court declined to rule on in
27 advance of the hearing. The Court criticized that the application was manually
28 filed so close to the hearing date. But there were reasons for both the timing and

1 the manual filing.

2 First, Hansmeier was not served with notice of the hearing until the
3 afternoon of March 7, 2013. Thus, within 24 hours of the time he learned that he
4 would be personally involved in the proceedings, he retained counsel, and got his
5 application on file.

6 Second, the Court's own rules precluded Hansmeier from filing
7 electronically as both Pietz and this Court suggested they should have. "The
8 following documents may not be filed electronically, but must also be submitted in
9 PDF format after they have been filed with the Clerk in paper format:...Any first
10 appearance document filed by a third party or non-party to the case."
11 <http://www.cacd.uscourts.gov/e-filing/exceptions-electronic-filing>. And, indeed,
12 the CM/ECF system requires attorneys filing electronically to do so on behalf of a
13 party who has already appeared in the matter by selecting the party. Because
14 Hansmeier had not appeared, nothing could be filed electronically on his behalf.

15 Notwithstanding the pending question regarding the Court's jurisdiction
16 over him as a witness, out of respect for the Court and its Order, Hansmeier made
17 himself telephonically available for the approximately three-hour long hearing on
18 the afternoon of March 11, 2013. Although the Court and the parties were advised
19 of his availability, nobody requested that Hansmeier provide any information. So,
20 that he was available to appear telephonically, rather than personally, had no
21 impact on the proceedings and further appeared on April 2, 2013.

22 In summary, Hansmeier had justification for not appearing in person on
23 March 11, 2013. Yet, he still specially appeared. His telephonic availability had
24 no impact on the proceedings given that he was never called to testify. As such, it
25 would be both inappropriate and inequitable to issue sanctions against him based
26 on any determination that they failed to comply with the order to appear.

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h. Hansmeier Was Not Under any Obligation to Appear Pro Hac Vice.

There is no basis for the Court to conclude that Hansmeier was required to enter a Pro Hac appearance in this Court on this matter. There is no credible evidence that Hansmeier prepared the Complaint or Notice of Interested Parties, met and conferred with opposing counsel, made an appearance before this Court or controlled the litigation. Hansmeier is unaware of any opinion which has held that an attorney who is not litigating a matter is responsible to specially apply for pro hac vice admission under similar circumstances as this Court has posited.

Under the Court’s apparent view, any attorneys who consult with one another would have to seek *Pro Hac Vice* Application, as would any general counsel, national coordinating counsel and any attorney acting in the role of an adjuster.

4. CONCLUSION

Respondent Hansmeier hereby request that sanctions not be imposed against him based upon the evidentiary record before this Court.

DATED: April 9, 2013

BAKER, KEENER & NAHRA, LLP

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