

1 Heather L. Rosing, Bar No. 183986
2 David M. Majchrzak, Bar No. 220860
3 Philip W. Vineyard, Bar No. 233628
4 KLINEDINST PC
5 501 West Broadway, Suite 600
6 San Diego, California 92101
7 (619) 239-8131/FAX (619) 238-8707
8 hrosing@klinedinstlaw.com
9 dmajchrzak@klinedinstlaw.com
10 pvineyard@klinedinstlaw.com

11 Attorneys for Specially Appearing for
12 PRENDA LAW, INC.

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

15 **INGENUITY 13 LLC,**

16 **Plaintiff,**

17 **v.**

18 **JOHN DOE,**

19 **Defendant.**

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

**PRENDA LAW, INC.’S NOTICE OF
APPEAL AND EMERGENCY
MOTION TO THE NINTH CIRCUIT
COURT OF APPEAL RE: THE
DISTRICT COURT’S AMENDED
ORDER DENYING IN PART AND
CONDITIONALLY GRANTING IN
PART RESPONDENT PAUL DUFFY’S
MOTION FOR APPROVAL OF BOND
AND ORDER STAYING
ENFORCEMENT OF MAY 6 AND
MAY 21 ORDERS IMPOSING
SANCTIONS AND PENALTIES
(Dkt Entry No. 177)**

20 TO THE COURT AND PARTIES AND RESPONDENTS AND THEIR
21 COUNSEL OF RECORD.

22 Specially appearing Respondent Prenda Law, Inc. (“Prenda Law”) hereby
23 serves Notice that it will be appealing the District Court’s Amended Order
24 Denying in Part and Conditionally Granting in Part Respondent Paul Duffy’s
25 Motion for Approval of Bond and Order Staying Enforcement of May 6 and May
26 21 Orders Imposing Sanctions and Penalties (Dkt. Entry No. 177 – hereinafter, the
27 “Amended Order”).
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KLINEDINST PC
501 WEST BROADWAY, SUITE 600
SAN DIEGO, CALIFORNIA 92101

KLINEDINST PC
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1 In addition, Prenda Law will be filing with the Ninth Circuit Court of
2 Appeals an emergency motion requesting alternative remedies pertaining to the
3 District Court’s Amended Order. The Motion will request one or more of the
4 following remedies:

- 5 1. An order vacating the Amended Order in its entirety and instructing the
6 District Court to grant and approve in its entirety, Paul Duffy’s Motion.
- 7 2. An order modifying the Amended Order to impose a bond requirement upon
8 the multiple appellants solely to cover any putative appellee’s appellate
9 costs, as opposed to the attorneys’ fees incurred by any appellee during
10 Prenda Law’s appeal.
- 11 3. An order consolidating Prenda Law’s appeal of the Amended Order with
12 Prenda Law’s underlying appeal of the sanctions order issued by the District
13 Court in the order to show cause proceedings.

14 The bases for Prenda Law’s appeal is that absent an underlying and
15 ***applicable*** cost-shifting statute, the district courts may not impose a bond
16 requirement for an appellee’s attorneys’ fees as a pre-condition to appeal. *See*
17 Azizian v. Federated Dep’t Stores, Inc., 499 F.3d 950, 958 (9th Cir. 2007).

18 The District Court, in its Amended Order, specifically cites to the Copyright
19 Act as the basis by which it has imposed an additional bond requirement of just
20 under \$136,000 for Prenda Law and its co-appellants. However, the District Court
21 has no jurisdiction by which to award attorneys’ fees pursuant to the Copyright
22 Act, because Plaintiff in the underlying matter, pursuant to Federal Rule of Civil
23 Procedure, Rule 41(a)(1), voluntarily dismissed the underlying copyright
24 infringement action on January 28, 2013. Such dismissal is effective upon filing
25 and removes the District Court’s authority to rule on the merits of the action. *See*
26 Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1077-78 (9th Cir.
27 1999). Thus, the Copyright Act cannot serve as a basis by which to impose the
28 insuring of any putative appellee’s attorneys’ fees by way of a Federal Rules of

KLINEDINST PC
501 WEST BROADWAY, SUITE 600
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1 Appellate Procedure, Rule 7, appellate bond.

2 Prenda Law shall also be challenging the conditions imposed upon
3 Appellants by the District Court for the approval of both bonds imposed by the
4 District Court.

5 Given the issues and legal authorities presented, and due to the onerous pre-
6 conditions the District Court has imposed upon Prenda Law and its co-appellants,
7 Prenda Law requests from the District Court an immediate, but temporary, stay of
8 enforcement of the District Court’s Amended Order to permit the Ninth Circuit
9 Court of Appeals to resolve Prenda Law’s pending emergency motion. Prenda
10 Law will file its emergency motion with the Ninth Circuit Court of Appeals on or
11 before Friday, June 14, 2013, and request from the Ninth Circuit a briefing
12 schedule for any opposition or replies. Prenda Law will serve its motion and the
13 Ninth Circuit’s briefing schedule to all interested appellate parties.

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16 Klinedinst PC

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18 DATED: June 12, 2013

19 Bv: /s/Philip W. Vineyard
20 Heather L. Rosing
21 David M. Majchrzak
22 Philip W. Vineyard
23 Attorneys for Specially Appearing for
24 PRENDA LAW, INC.

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