

1 MR. BRODSKY: Your Honor, may I inquire of the  
2 court for a moment?

3 THE COURT: Sure.

4 MR. BRODSKY: I am not quite sure what the  
5 relevance of this is, the foundation for it or exactly  
6 what counsel is doing. It just seems to be his own  
7 statement of his investigation.

8 THE COURT: Do you know the general subject that  
9 we are going to discuss now?

10 MR. BRODSKY: I believe so, your Honor.

11 THE COURT: Okay. That is what I think it is, and  
12 hopefully it will help him. Now, when it gets down to  
13 the source of this material and the accuracy of this  
14 material, I hope I will be hearing from you gentlemen. I  
15 don't have the independent knowledge of this one way or  
16 the other. Thank God for the adversarial process.

17 MR. WAXLER: Your Honor, so, then, should  
18 Mr. Pietz be on the stand if he is going to give  
19 essentially testimony about this exhibit?

20 THE COURT: I don't make a habit of placing  
21 lawyers under oath, but this case may change that. I  
22 figure officers of the court will not knowingly make  
23 misrepresentations to the court, will they.

24 MR. WAXLER: No, they won't.

25 THE COURT: Until this case.

1 MR. WAXLER: My client hasn't in this case.

2 MR. PIETZ: Your Honor, to explain what it is,  
3 what I thought I might do is to give a very brief  
4 overview of the organization, and, then, I thought I  
5 would go through some specific documents about Mr. Steele  
6 and a couple of arguments. So this is really argument,  
7 essentially, a couple of exhibits that go to Mr. Steele's  
8 connection to the California as well as a couple of  
9 points about Mr. Paul Hansmeier and Mr. Duffy.

10 THE COURT: Okay.

11 MR. PIETZ: So, in any event, this is a chart that  
12 was essentially prepared. This was prepared by my office  
13 essentially as a tool to aid in the understanding of how  
14 Prenda Law appears to have evolved over the past few  
15 years.

16 Essentially, it started out here with Steele  
17 Hansmeier, and John Steele -- I know that is a little  
18 hard to see -- John Steele, Paul Hansmeier and Brett  
19 Gibbs. Mr. Steele and Mr. Hansmeier were the named  
20 partners in the firm, and Mr. Gibbs was the of counsel  
21 originally. When they first started out, circa 2011 --

22 THE COURT: I am going to have to stop you. How  
23 do you know that Mr. Gibbs was of counsel with Steele and  
24 Hansmeier?

25 MR. PIETZ: Your Honor, I can point to the

1 specific exhibit, but there are pleadings of which the  
2 court can take judicial notice where he is listed on the  
3 pleadings as of counsel to Steele Hansmeier.

4 THE COURT: You are aware of the fact that  
5 Mr. Hansmeier doesn't know what capacity Mr. Gibbs was  
6 working at his law firm?

7 MR. PIETZ: Correct, your Honor. So, in any  
8 event, let me put it this way. Mr. Gibbs filed documents  
9 in federal court indicating on the caption that he was of  
10 counsel to Steele Hansmeier.

11 THE COURT: Okay.

12 MR. PIETZ: Now, I believe I can also speak to  
13 this if the court is so inclined that Mr. Lutz was  
14 holding himself out to the world as a paralegal at that  
15 time, working, according to Mr. Paul Hansmeier, solely  
16 for Mr. Steele. At this time, most of the lawsuits with  
17 a few exceptions filed by Prenda around 2011 were on  
18 behalf of a porno production, pardon me, adult  
19 entertainment production company that actually people  
20 have heard of before. And that is this list of clients  
21 here.

22 What happened is that sometime in 2012, the  
23 Steele Hansmeier firm was disbanded or become Prenda,  
24 sold its client book to Prenda Law. We are not entirely  
25 sure exactly the nature of the transaction, but, in any

1 event, at that point, Paul Duffy became involved as the  
2 nominal figurehead of the Prenda Law enterprise.  
3 However, there are indications that Mr. Steele and  
4 Mr. Hansmeier remain involved and Mr. Gibbs has declared  
5 that he essentially continued on as of counsel handling  
6 the same cases only now on behalf of Prenda Law, Inc.  
7 rather than Steele Hansmeier LLC.

8 At the same time that Steele Hansmeier became  
9 Prenda, sometime around, then, in 2012, I am not exactly  
10 sure, Mr. Hansmeier started up his own shingle in  
11 Minnesota, the virtual office called the Alpha Law Firm  
12 LLC. So, essentially, Mr. Hansmeier sometimes files  
13 pleadings in federal court that list his affiliation as  
14 Alpha Law Firm LLC, but, by the same token, Mr. Gibbs has  
15 identified Mr. Paul Hansmeier as being the person from  
16 whom he took direction at Prenda.

17 And, indeed, the court may recall from the  
18 deposition transcript read over the weekend that  
19 Mr. Hansmeier testified that, indeed, his clients  
20 deposited their trust account funds into the Prenda Law  
21 Firm account rather than to the Alpha Law Firm account.

22 THE COURT: Stop. I hate to interrupt you.

23 But she means more to me than this argument,  
24 and we have had her going at light speed for an  
25 hour-and-a-half. Right. So I am going to take a break,

1 and we can all take a break. How about 10 minutes.

2 Okay.

3 MR. PIETZ: Very good. Thank you, your Honor.

4 (Recess from 2:58 to 3:09.)

5 THE COURT: All right. Mr. Pietz.

6 MR. PIETZ: Thank you. I will attempt to keep  
7 this section very brief, and then we will move on to some  
8 documentary evidence. This is just a summary.

9 So, as I was saying, sometime around 2012,  
10 there was a bit of a shift in the Prenda business  
11 strategy. Mr. Hansmeier -- so what happened is these  
12 companies, AF Holdings, LLC, Ingenuity 13 LLC and then  
13 there is a couple of other companies which are the ones  
14 in the CFAA cases. That is Arte de Oaxaca LLC and Guava  
15 LLC. And the CFAA cases have primarily been filed in  
16 state court and have indeed tried to use -- certain  
17 states have presuit discovery procedures that are more  
18 lenient than Federal Rule of Civil Procedure 27. So it  
19 is sort of a newer twist is these state court CFAA cases  
20 and Arte de Oaxaca.

21 But, in any event, according to Mr. Hansmeier  
22 in his deposition, these essentially shell company  
23 plaintiffs are owned by a mystery trust. Mr. Hansmeier,  
24 as 30(b)(6) deponent -- well, anyway, I won't go into  
25 that. The court read it. According to Mr. Gibbs'

1 special counsel, though, on the same day, February 19th,  
2 there is conflicting testimony essentially saying that  
3 Livewire Holdings LLC is actually the current holder of  
4 AF Holdings and Ingenuity 13.

5 So, in any event, these are the parent  
6 companies, some mystery trust and Livewire Holdings LLC.  
7 There is documents, you know, I had this sort of set  
8 aside to potentially go through with Mr. Gibbs, but I can  
9 also just show the documents, show what I have. In any  
10 event, there is documents showing Mr. Gibbs as in-house  
11 counsel for Livewire Holdings.

12 There are various other connections between  
13 Livewire Holdings and the attorneys we see over here.  
14 Mr. Dugas is a local counsel who has worked at both  
15 Prenda and Alpha Law which I can show through his  
16 LinkedIn profiles, obviously, not central to the case.  
17 Mr. Dugas' wife has been identified on LinkedIn as  
18 in-house counsel for Livewire Holdings.

19 In addition, what I will talk about now is the  
20 way that we see the lawyers. Mr. Hansmeier has been both  
21 30BC deponent for AF and as its counsel. In any event,  
22 what seemed to happen is that at some point these cases  
23 filed on behalf of Ingenuity, AF Holdings, Arte de Oaxaca  
24 and Guava LLC are cases where what appears to have  
25 happened is the lawyers essentially took assignment of

1 the underlying intellectual property rights in these  
2 mysterious shell companies. One recurring theme here is  
3 the way that when we are seeing the straw men, there is  
4 always a connection to John Steele. So, for example, in  
5 the VPR International, we see John Steele is the  
6 attorney. We see Alan Cooper listed on the corporate  
7 registration. The address listed for VPR International,  
8 the 4532 East Villa Teresa Drive. My understanding based  
9 on documents that have been submitted with the court is  
10 that is an address that comes up for John Steele's sister  
11 and a gentleman named Anthony Saltmarsh, in addition, of  
12 course, to being the address listed for Mr. Cooper.

13 So on various federal court filings in the  
14 Northern District of California, all of which are  
15 attached as exhibits to the deposition that was lodged  
16 with the court which the court read over the weekend,  
17 when pressed to identify the person at AF Holdings who  
18 would be made available for an early neutral settlement  
19 evaluation conference, there are various court filings  
20 listing the owner of AF Holdings as somebody named Salt  
21 Marsh, two words.

22 So, in any event, what seems to perhaps be the  
23 case is that this Anthony Saltmarsh lived at this address  
24 with John Steele's sister which was essentially used as a  
25 front for various entities involved in Prenda activities.

1 I don't want to spend too much time on just  
2 the overview. What I thought I might do is shift instead  
3 to taking the nonappearing folks individually. And I  
4 thought I might start with Mr. Steele. So I have some  
5 documents which go to that, and I will switch back now  
6 to -- okay. There we go. So I will note that in the  
7 declaration submitted to the court by Mr. Steele on  
8 Friday, he claims that he resides in the State of  
9 Florida.

10 I will point out that when Mr. Steele was  
11 under threat of sanction in the state of Florida, he  
12 declared to the court there that he resided in the State  
13 of Nevada and only visited the State of Florida. So I  
14 have here the affidavit of John Steele that he filed, and  
15 you can see the file stamp on the top. It is Middle  
16 District of Florida, Case No. 812 CV 1685 that was filed  
17 on December 20th, 2012. And, in Paragraph 2, Mr. Steele  
18 swore to the court that my legal residence is Las Vegas,  
19 Nevada, and I also spend one to two weeks a month in  
20 Miami, Florida. So my understanding must be then that  
21 sometime between last December and now Mr. Steele has  
22 decided that his residence is not Nevada but rather  
23 Florida.

24 In any event, and before moving on, I would  
25 ask the court to take judicial notice of the fact that in



1 the -- that this affidavit which was filed in the public  
2 record in the Middle District of Florida that Mr. Steele  
3 states that he spends one to two weeks a month in Miami,  
4 Florida. Mr. Ranallo can pass out copies of the  
5 affidavit to everybody.

6 So, in any event, let's look at some other  
7 documents about Mr. Steele. And what I would start with,  
8 I believe, is a declaration here, and I will ask  
9 Mr. Ranallo again to pass this out for the court, the  
10 declaration of Michael B. Stone, and what this  
11 declaration is, the declaration itself is essentially  
12 just authenticating the document, but the document at  
13 issue is a collection of pleadings in a Northern District  
14 of California action in which it was a case filed on  
15 behalf of a Prenda client.

16 Well, this I think was an actual company that  
17 people have heard of in an earlier case, but in any  
18 event, here, we see the pleading. So the declaration  
19 authenticates it, and then Exhibit 1 is a copy of the  
20 complaint which as we can see was filed in the United  
21 States District Court for the Northern District of  
22 California, and it is Civil Action No. 511 CV 3648.

23 Well, in any event, the interesting thing  
24 about this complaint is who signed the subpoena that was  
25 directed in this case at a John Doe defendant who resided

1 in California. And the answer, and here we see a copy of  
2 the subpoena, pardon me, authenticated by Mr. Stone.  
3 This is the letter that the ISP normally sends out, and,  
4 here, we see a copy of the subpoena itself. And this is  
5 in the same action.

6 Then, we see, there, that this subpoena which  
7 again was signed by John Steele in a California action  
8 requesting information of a John Doe defendant in the  
9 State of California. So, essentially, I would ask that  
10 this declaration of Michael Stone be admitted into  
11 evidence as Exhibit, I believe, we are on 9.

12 Is that correct, Madam Clerk?

13 THE CLERK: 10.

14 MR. PIETZ: Pardon me. 10. I am one behind.

15 THE COURT: All right. Any objection?

16 MR. WAXLER: Your Honor, I just question the  
17 relevancy of it as to Mr. Gibbs. Again, it is not one of  
18 the cases that you put in your OSC.

19 THE COURT: It will be admitted.

20 MR. PIETZ: Similar document that I will move onto  
21 next. What we have here is a declaration which was filed  
22 on the docket in a case in the Northern District of  
23 California by a man named Samuel Teitelbaum. It is  
24 Northern District of California No. 311 CV 5628. And we  
25 can see here that it is pending in the Northern District

1 of California.

2 In this declaration, Mr. Teitelbaum explains  
3 that he received a letter directed to him in California  
4 from Prenda Law and that the letter which was mailed to  
5 him in California which is there is a copy of it right  
6 here. It is on Steele Hansmeier letterhead, and if we go  
7 to the last page, we see that the letter, mailed into the  
8 State of California in a case pending in the Northern  
9 District of California, is signed by John Steele,  
10 attorney and counselor at law.

11 So, in any event, I would ask that this be  
12 admitted into evidence as Exhibit 11, and these both go  
13 to showing that Mr. Steele has indeed reached into the  
14 State of California in terms of his actions in BitTorrent  
15 copyright litigation cases.

16 THE COURT: All right. Will be received.

17 MR. PIETZ: So what I will do now, I think that  
18 the other facts that I had already pointed out about the  
19 other gentlemen who are not here today, so I mean Paul  
20 Hansmeier and Paul Duffy, I pointed out in my opposition  
21 to the objections which was filed on Friday, but, in  
22 general, I would argue the jurisdictional issue as  
23 follows.

24 What we have from Mr. Gibbs is a declaration  
25 saying that anything that was potentially improper in

1 these cases was done at the direction of his superiors at  
2 the Prenda law firm. He identifies those people as John  
3 Steele and Paul Hansmeier. Interestingly enough,  
4 Mr. Duffy isn't on the list or perhaps maybe not as much.

5 Mr. Duffy has his California bar license in  
6 the state of California and has substituted in in  
7 Mr. Gibbs' place in a variety of actions in the Northern  
8 District of California. Mr. Hansmeier, in addition to  
9 being identified by Mr. Gibbs as essentially running a  
10 law firm doing business in California, flew to California  
11 apparently of his own free will to appear as the  
12 corporate 30(b)(6) deponent of AF Holdings LLC. So we  
13 have Mr. Hansmeier reaching into the state of California,  
14 attending a deposition in California in a Northern  
15 District of California case, representing essentially  
16 that the same plaintiff that is at issue here, AF  
17 Holdings LLC.

18 So at least with respect to Mr. Duffy who has  
19 his bar license here and Mr. Hansmeier who flew here as a  
20 30(b)(6) deponent and has been identified, I think it is  
21 fairly clear that probably both general and specific  
22 jurisdiction exists.

23 Mr. Steele has perhaps been a little more  
24 careful about trying to keep his fingerprints off here,  
25 but I would remind the court that Mr. Gibbs has

1 identified him as essentially running a law firm in  
2 California which by the way is not qualified to do  
3 business in California, and I checked with the state bar  
4 and it is not registered as a law firm here.

5 But in any event --

6 THE COURT: You talking about Prenda now?

7 MR. PIETZ: Talking about Prenda. Yes, sir.

8 In any event, I apologize. I don't have  
9 documents to back that up, but I can provide them. But,  
10 in any event, I think that with respect to Mr. Steele  
11 when you take Mr. Gibbs' declaration and add it together  
12 with a subpoena signed by Mr. Steele. And, pardon me, I  
13 will note one other thing about the declaration of  
14 Michael Stone. In addition to authenticating the  
15 documents, he also included some back and forth, some  
16 meet and confer correspondence he had with Mr. Steele.

17 So, essentially, Mr. Stone noticed the fact  
18 that Mr. Steele was not licensed in California and that  
19 he had signed the subpoena and wrote to Mr. Gibbs saying  
20 this subpoena is invalid. And what happened is that  
21 Mr. Steele wrote back directly without cc'ing Mr. Gibbs  
22 and essentially shrugged off the concerns about the  
23 subpoena being signed by an attorney who doesn't have a  
24 license in California.

25 So, in any event, I think that with respect to

1 Mr. Steele, when you add together the subpoena issued  
2 into the state of California, a demand letter issued  
3 under the state of California as well as Mr. Gibbs'  
4 testimony, it is pretty clear that the court has personal  
5 jurisdiction.

6 I don't have a tremendous number of additional  
7 exhibits on this topic. However, I do have quite a few  
8 with respect to what I view as Mr. Gibbs' central role in  
9 the Prenda law organization.

10 MR. BRODSKY: Your Honor, may I make one comment?

11 THE COURT: You can make more than that. Thank  
12 you.

13 Yes. Go ahead.

14 MR. BRODSKY: We are not taking a position at the  
15 present time on the jurisdictional issues that the court  
16 is deciding, but there were statements made about my  
17 client that I believe mischaracterize the evidence that  
18 has been put forward.

19 THE COURT: Okay. Listen, let me just sort of  
20 tell you the way we are going to proceed here. At this  
21 point, you will have the floor. All right. I can't  
22 imagine you are going to raise too much in opposition to  
23 the jurisdictional issue. Otherwise, he is in. So you  
24 go right ahead.

25 Now, a number of things -- I am just going to

1 give you some of my thinking. A number of things were  
2 stated in your papers. Some of them caused me some  
3 concern because they were inaccurate. For example, you  
4 make the argument that certain people were identified as  
5 infringers because there was no way, for example, that  
6 someone else could have been piggy-backing off of their  
7 modem because of the size of the lot, where the house is  
8 situated on the lot, the proximity or lack of proximity  
9 of other residences around, et cetera.

10 Your representation of these homes and the  
11 neighborhoods and juxtaposition of other houses around  
12 them was simply not accurate. Not in the least bit. And  
13 I found that troublesome when you are asking me, then, to  
14 accept all of your our arguments.

15 So I just want to throw that out there to let  
16 you know some of my thinking.

17 MR. WAXLER: Our turn, your Honor?

18 THE COURT: I don't care who. It is this side.

19 MR. WAXLER: We will call Mr. Gibbs to the stand,  
20 your Honor.

21 THE COURT: All right.

22 (The witness was sworn.)

23 MR. PIETZ: Your Honor, before we move onto  
24 Mr. Gibbs, may I request that we admit into evidence the  
25 affidavit of John Steele as Exhibit 12, the Michael Stone

1 declaration as Exhibit 13 -- oh. Pardon me. Stone and  
2 Teitelbaum have already been admitted so just the  
3 affidavit of John Steele. I would ask that that be  
4 admitted as Exhibit 12.

5 THE COURT: I think that's right. Are we up to  
6 12? Okay. All right.

7 THE CLERK: If you could state your full and true  
8 name for the record and spell your last name.

9 THE WITNESS: Sure. Brad Gibbs, G-I-B-B-S.  
10

11 DIRECT EXAMINATION

12 BY MR. WAXLER:

13 Q Mr. Gibbs, who is your present employer?

14 A I am not currently employed.

15 Q You became employed -- I'm sorry. You became an of  
16 counsel, 1099 independent contractor for Steele  
17 Hansmeier; correct?

18 A Yes.

19 Q Was Steele Hansmeier an existing law firm at the  
20 time that occurred?

21 A I believe they had been existing for a number of  
22 months at that point.

23 Q What were you told your role would be at Steele  
24 Hansmeier?

25 A Basically, California counsel for Steele Hansmeier



1 in bringing lawsuits on behalf of their clients.

2 Q Were you paid as an employee?

3 A No.

4 Q Did you share in Steele Hansmeier profits?

5 A No.

6 Q Were you on the management of Steele Hansmeier?

7 A No.

8 Q And who did you understand were the decision makers  
9 of Steele Hansmeier?

10 A John Steele and Paul Hansmeier.

11 Q When you were an of counsel to Steele Hansmeier,  
12 who supervised you?

13 A John Steele and Paul Hansmeier.

14 Q Did you have periodic meetings while at Steele  
15 Hansmeier to discuss cases?

16 A Yes, we did.

17 Q And were those weekly meetings?

18 A Yes. Sometimes they would be sending the schedule,  
19 but, yes, mostly weekly meetings.

20 Q Who participated in those meetings?

21 A John and Paul would call me, and they would hold a  
22 weekly meeting.

23 Q And were these by phone or in person?

24 A These were by phone.

25 THE COURT: Were they ever in person.

1 THE WITNESS: I went sometimes and met them, and  
2 then we had meetings, yes, in person at that point, but  
3 this was only a couple of times.

4 THE COURT: This is out of California?

5 THE WITNESS: Yes. Well, I have met with Paul  
6 Hansmeier in California prior to this deposition, but the  
7 other, everything was out of California.

8 Q BY MR. WAXLER: When -- were any cases that you filed  
9 while at -- while of counsel to Steele Hansmeier, were  
10 any of those cases settled?

11 A Yes.

12 Q And did the checks, the settlement checks come to  
13 you?

14 A No.

15 Q Did you have a client trust account in any account  
16 in which you had an interest at all as a signatory?

17 A No. Actually, I don't even have a client trust  
18 account.

19 Q So the checks were sent to Steele Hansmeier's trust  
20 account?

21 A I don't know. I would assume they were. They  
22 weren't sent to me. They were sent to Steele Hansmeier.

23 Q And how did you learn that Prenda law was going to  
24 substitute in or take over the cases from Steele  
25 Hansmeier?

1 A Basically, I heard of the name Prenda Law. They  
2 told me that Prenda Law was now taking over the business.  
3 Steele Hansmeier was no longer going to exist at that  
4 point.

5 Q And who is they in that answer?

6 A That would be John Steele and Paul Hansmeier.

7 Q Were you on the management committee at all of  
8 Prenda Law?

9 A No.

10 Q Were you partner at Prenda Law?

11 A No.

12 Q What was your affiliation with Prenda Law?

13 A The same as it was for Steele Hansmeier which would  
14 be of counsel, California counsel essentially for Prenda  
15 Law.

16 Q So you were compensated with a 1099?

17 A Yes. That is correct.

18 Q And did that ever change over the course of the  
19 time which you were counsel to Prenda Law?

20 A In terms of what?

21 Q In terms of your relationship with that firm?

22 A No. I would only say that they, John and Paul, had  
23 asked me to help the other counsel in different states,  
24 basically, like, give them advice in doing their own  
25 cases in different states. That was the only change

1 really. Other than that, I was just California counsel.

2 Q While of counsel to Prenda Law, did you ever  
3 receive any settlement checks?

4 A Myself personally, no.

5 Q Did you have a client trust account at Prenda Law  
6 that you somehow administered or controlled?

7 A No.

8 Q And were you supervised at Prenda Law?

9 A Yes, I was.

10 Q Who were you supervised by?

11 A Paul Hansmeier and John Steele.

12 Q Were you supervised by Paul Duffy?

13 A No.

14 Q And when you say supervised, could you just  
15 describe what you mean by that? How did they supervise  
16 you?

17 A Sure. You know, they essentially were the ones  
18 that would initiate cases. By that, I mean, they would  
19 tell me they wanted to file certain cases in California,  
20 for instance, and they would instruct me to go ahead and  
21 file those. And they would give me the authority to do  
22 so. I would be told what cases we are looking at and how  
23 many cases we are talking about, and then I would file  
24 the cases.

25 And they would give me general guidelines on

1 what to do and sometimes the cases would be settled by  
2 John as was pointed out earlier, and sometimes they gave  
3 me certain parameters which I could settle the case  
4 myself.

5 Q Did you ever talk to anybody that you understood to  
6 be the client, AF Holdings?

7 A No. The communications were solely through Paul  
8 Hansmeier and John Steele.

9 Q Did you ever talk to anybody who said they were  
10 affiliated with Ingenuity 13?

11 A Well, I mean, aside from Mark Lutz who is the CEO  
12 of Ingenuity 13, but aside from that, no. All my  
13 communications were straight through Paul Hansmeier and  
14 John Steele.

15 Q Did Mr. Lutz ever give you direction on the  
16 handling of any of these cases directly?

17 A No. Actually, I only found out about that  
18 connection, I would say, after the cases in the Central  
19 District were filed, about him being the CEO. I didn't  
20 know that before.

21 Q And the cases that were filed in the Central  
22 District were dismissed; correct?

23 A That is correct.

24 Q And whose decision was it to dismiss those cases?

25 A Ultimately, it was John Steele and Paul Hansmeier's

1 decisions. We had talked about it. As counsel of record  
2 here, I just kind of broke down like a cost benefit  
3 analysis of those cases. And they said, basically, go  
4 ahead and dismiss them because -- they said go ahead and  
5 dismiss them.

6 Q When the cases were filed, did you have a  
7 discussion with anybody about whether notice of  
8 interested parties should be filed?

9 A I did. Yeah.

10 Q And who did you have discussions with?

11 A Mostly Paul Hansmeier. Yes. Mostly Paul Hansmeier  
12 but sometimes John Steele, I guess. I don't know. It  
13 was a while ago I guess.

14 Q Did you file those notices of interested parties?

15 A Yes.

16 Q What did they say in connection with AF Holdings.

17 A They said there was no other interested parties.

18 Q Do you have any personal knowledge of that  
19 statement as untrue?

20 A No, I did not. No. I still don't. I mean, in  
21 terms of I know there is other things involved in terms  
22 of the trust and stuff like that, but in terms of other  
23 people involved, I was only taking direction from these  
24 guys in terms of these types of filings.

25 Q And these guys are?

1 A These guys are Paul Hansmeier and John Steele.

2 Q In connection with Ingenuity 13 cases did you file  
3 notices of interested parties?

4 A That is correct. Yes.

5 Q And were you ever advised that the information --  
6 how did you obtain the information for those notices?

7 A Well, I just, I would ask them, you know, are there  
8 any other people that I should be noticing on this  
9 document that I am filing with the court.

10 Q Who is them in your response?

11 A That would be Paul Hansmeier and John Steele.

12 Q Were you told not to do that again. Instead of  
13 saying them, were you told by Paul Hansmeier, John Steel  
14 that the information you included in those notice of  
15 interested parties was correct?

16 A So they actually told me, I was instructed to fill  
17 those documents out like I did.

18 Q There was a question raised by the court this  
19 morning about the failure to have filed notices of  
20 related cases. My question is did you consider filing  
21 notices of related cases when you filed the actions in  
22 the Central District of California?

23 A Yes, we did.

24 Q And could you please describe for the court what  
25 your thought process was as a result of, in not filing

1 these notices?

2 A So we had filed -- well, I filed on behalf of  
3 Steele Hansmeier, then Prenda Law, a number of cases in  
4 the Northern District of California, and those were cases  
5 with multiple people in them.

6 And what the court in the Northern District of  
7 California concluded, almost every court, at that point,  
8 after filing multiple cases was that joinder was not  
9 valid and that they basically told us in no uncertain  
10 terms that these cases weren't related. Therefore, that  
11 informed my belief in terms of whether we wanted to  
12 relate these cases or not. They said these cases,  
13 essentially, through their orders and through live  
14 hearings, that these cases aren't related, they should be  
15 brought as individual actions. So it was just a decision  
16 to bring those individual actions and not relate the  
17 cases based on that.

18 Q And your experience in Northern California, that  
19 predated the filings of the Central District actions that  
20 we are here to discuss today?

21 A Yes. I don't even know if I was admitted into the  
22 Central District at that point.

23 THE COURT: Let me jump in a second. You were  
24 told in the Northern District of California that when you  
25 filed a lawsuit on behalf of either AF Holdings or



1 Ingenuity 13 versus Does 1 through many, that that  
2 joinder was improper; correct?

3 THE WITNESS: Some cases. Some cases it was not  
4 improper. Some judges felt differently.

5 THE COURT: All right. But if it involved  
6 different movies, downloads, different times, different  
7 people, different places, different ISP addresses, they  
8 said you need to file separate lawsuits; right?

9 THE WITNESS: Some of them were the same clients,  
10 same videos.

11 THE COURT: Okay. But even then?

12 THE WITNESS: Yes.

13 THE COURT: Even then, you had to file separate  
14 lawsuits?

15 THE WITNESS: Yes. We were pointing that  
16 direction even there was a footnote in one of the courts'  
17 opinions saying basically that we were trying to get  
18 around the filing fee, and that is what they thought so  
19 we should file individual cases from there on out.

20 THE COURT: Of course, you were, but that is not  
21 where we are going here. Now, that deals with joinder in  
22 one lawsuit and consolidating really separate and  
23 complete causes of action, different parties in a single  
24 lawsuit.

25 Now, what we are talking about here is with

1 respect to your notice of related case.

2 THE WITNESS: I understand.

3 THE COURT: You do because I can hear it now. I  
4 can hear you going it is compound, all the stuff that you  
5 do.

6 Do you realize -- no. Did you equate the  
7 instructions you got from the court regarding improper  
8 consolidation of a lot of cases, a lot of claims into a  
9 single complaint, did you somehow conflate that with the  
10 issue of related cases, notices of related cases? And  
11 you know what that is for, here; right?

12 THE WITNESS: I understand.

13 THE COURT: You understand why we are looking for  
14 that.

15 THE WITNESS: I understand.

16 THE COURT: Tell me what your understanding is as  
17 to why the court is interested in knowing whether or not  
18 there are related cases.

19 THE WITNESS: Because if they are similar cases,  
20 my belief is the court wants to know about those so the  
21 court can handle it so that there are uniform decisions  
22 essentially that are held from the same court.

23 THE COURT: Excellent. A completely different  
24 objective -- right -- than consolidating a lot of  
25 different lawsuits in one complaint; right? Completely

1 different. This is judicial economy.

2 THE WITNESS: I understand. Yes. I understand  
3 what you are saying. In terms of that it was just the  
4 decision that was made, and perhaps it was the wrong  
5 decision, but, you know, the decision was made.

6 THE COURT: Okay. Don't do that. Decision that  
7 was made. Who made that decision?

8 THE WITNESS: It was a discussion amongst myself,  
9 Paul Hansmeier and John Steele and, probably, mostly,  
10 Paul Hansmeier. I don't even know if Steele was involved  
11 in that discussion or not, and that is just what we  
12 decided to do.

13 THE COURT: All right. The law firm that you were  
14 working for -- and I guess initially we are talking  
15 Steele Hansmeier or the other way around.

16 THE WITNESS: It was Steele Hansmeier.

17 THE COURT: Okay. Did that firm have, in its  
18 California office, did it have a client trust account?

19 THE WITNESS: In California.

20 THE COURT: Yes.

21 THE WITNESS: Well, I was working of counsel to  
22 them. So, no, I never had my own client trust account.  
23 The funds were always going through the law firm.

24 THE COURT: Were you operating out of your home?

25 THE WITNESS: Yes, I was originally.

1 THE COURT: Did at any time you ever have a  
2 business office even if it was a suite any place?

3 THE WITNESS: Not for Steele Hansmeier.

4 THE COURT: What about Prenda?

5 THE WITNESS: Prenda Law, yes. They wanted me to  
6 get an office. So I got an office, and I actually moved  
7 twice.

8 THE COURT: At that time, did you have a client  
9 trust account?

10 THE WITNESS: No, your Honor.

11 THE COURT: Was it your understanding that in  
12 California that you were required to have a client trust  
13 account?

14 THE WITNESS: My belief was that considering I was  
15 working as of counsel to the Prenda Law, and Prenda Law  
16 had the trust account, that was my understanding of how  
17 the money was dealt with. I didn't ever -- they never  
18 saw my bank account. I was paid like by Prenda Law as an  
19 attorney, of counsel attorney, 1099. And so my  
20 understanding was that they had a trust account. And,  
21 therefore, you know, the people that were working with  
22 them did not need trust accounts themselves.

23 THE COURT: Okay. All right. And you only handle  
24 one kind of business; right?

25 THE WITNESS: What do you mean by that, your

1 Honor? I only handle one kind of business?

2 THE COURT: Yes.

3 THE WITNESS: Can you explain your question? You  
4 mean in terms of just being plaintiff's lawyer?

5 THE COURT: Plaintiff's lawyer for copyright  
6 infringement for the adult film industry.

7 THE WITNESS: Well, no, actually. So originally  
8 when I was working for Steele Hansmeier, I was also  
9 working for an arbitrator. So I had other business, but  
10 it was just a 1099 worker at the same time. I was  
11 helping him out with his cases, and so when Prenda law  
12 came around, we basically, I said, look, you guys are  
13 trying to put a lot of work on my plate essentially, and  
14 I am kind of split here. And they said, well, we would  
15 like to basically have you work solely for Prenda Law,  
16 this is being Paul Hansmeier and John Steele. And so I  
17 wrapped up my arrangement with the arbitrator, and I  
18 became exclusive doing stuff for Prenda Law at that  
19 point.

20 THE COURT: Listen, last January, this past  
21 January, a few weeks ago, I guess you started withdrawing  
22 as counsel of record.

23 THE WITNESS: That is correct, yes.

24 THE COURT: All right. And you just testified  
25 that you are no longer employed by Prenda?

1 THE WITNESS: That is correct. I am no longer  
2 employed by Prenda or any other corporation or LLC that  
3 is involved in these cases. I have moved on. I am going  
4 to work again for the arbitrator and find some other work  
5 essentially. You know, so that is where I am right now.  
6 Actually, I was working for Livewire for two months, but  
7 there was actually a couple of things that happened in  
8 terms of I never even got paid for my two months there.

9 THE COURT: Two months where?

10 THE WITNESS: Two months at Livewire.

11 THE COURT: You did get paid by Prenda though;  
12 right?

13 THE WITNESS: Before that, yes. During 2012, yes.

14 THE COURT: So why did you leave?

15 THE WITNESS: Well, there is multiple reasons for  
16 it. Personal reasons, I am getting married soon. So I  
17 wanted to focus on that, but, you know, to be honest with  
18 you --

19 THE COURT: That would be good.

20 THE WITNESS: Yeah. No. I am looking forward to  
21 it. And to be honest with you, these types of things  
22 raising up themselves, I just didn't want to be  
23 affiliated with it anymore. It wasn't worth it. I was  
24 getting a lot of harassment. My family was receiving  
25 e-mails and correspondence from people, my fiance, my

1 parents. I just didn't see, and I was getting a lot of  
2 negative exposure that, you know, I just didn't want  
3 anymore ultimately.

4 And, then, also, I didn't really get along  
5 with one of the people that managed me. So I, you know,  
6 I decided to go ahead and exit and told them about that,  
7 and, yeah, and that is the situation essentially.

8 THE COURT: Okay.

9 Q BY MR. WAXLER: Just to complete your employment  
10 picture because there was perhaps some gaps. You learned  
11 sometime in late 2012 that Prenda Law was no longer going  
12 to be your, I will just say the word employer but you  
13 weren't going to be of counsel to Prenda Law anymore;  
14 correct?

15 A That is correct.

16 Q And how were you informed of that?

17 A I was told I would say middle December or so.  
18 There was a brainstorming issue about -- they were, John  
19 Steele and Paul Hansmeier were brainstorming about  
20 whether they wanted basically to start their own company,  
21 I guess. And the company was Livewire, turned out to be  
22 Livewire. And that Livewire would essentially buy AF  
23 Holdings and Ingenuity 13 and Guava.

24 And so I was informed that as of January 1,  
25 you know, Livewire extends you this offer, and basically

1 if you don't accept this offer, then, you know, we are  
2 going to part ways. So the offer was to be in house  
3 counsel for Livewire, and so I was hired W2 employee for  
4 this company which is a holding company of copyrights.

5 Q And you understood that one of the subsidiaries of  
6 that company included AF Holdings; correct?

7 A That was my understanding, yeah.

8 Q When did you come to a different understanding?

9 A Oh. Well, during the deposition, I came to a  
10 different understanding because obviously the deposition  
11 was said what was said, and I asked Paul Hansmeier about  
12 that.

13 Q And what we are talking about here is  
14 Mr. Hansmeier's testimony that there was a trust that  
15 owned AF --

16 A That is correct.

17 Q And before that testimony, you heard that  
18 testimony, you understood as of January 1, that Livewire  
19 would own --

20 A Yes.

21 Q Livewire would own AF Holdings?

22 A That is correct.

23 Q And that is why in at least one of the pleadings  
24 you put that you are in house counsel for AF Holdings  
25 because that was a company that was owned by Livewire;



1 correct?

2 A I was specifically told to sign as in house counsel  
3 for AF Holdings by Paul Hansmeier in that case. I was  
4 actually because of Mark Lutz' position as CEO, I was  
5 trying to get his signature for that document, but Paul  
6 Hansmeier said, no, you are in house counsel for Livewire  
7 thereby in house counsel for AF Holdings, you sign it on  
8 behalf of the client.

9 Q Is one of the other reasons you decided to leave  
10 Livewire is because you learned that the stamp was being  
11 used for your signature?

12 A Yes. Certain letters were sent out without my  
13 knowledge. I never authorized them, never approved them.  
14 When I questioned John about them, he was, like,  
15 basically said, this is your role. This is what you have  
16 to do. You have to send these letters out, and I said I  
17 don't feel comfortable, these aren't even my cases,  
18 essentially. And, you know, I actually e-mailed Mark  
19 Lutz about that, and he said you got to talk with John  
20 and Paul about this.

21 THE COURT: I'm sorry. What kind of letters are  
22 we talking about? Is that the settlement letters?

23 THE WITNESS: Settlement letters. They had been  
24 using -- they originally said they were going to do a  
25 stamp for me for certain things, but I thought they were

1 only for my cases. And, you know, later, I found out  
2 that stamp might have been used for cases that I never  
3 even participated in or seen the letters before they went  
4 out.

5 THE COURT: Let me make sure I understand now.  
6 Livewire eventually became the parent of AF Holings and  
7 Ingenuity 13 LLC?

8 THE WITNESS: That was my understanding. I was  
9 told that, yeah. And that is why I was hired and a lot  
10 of people were hired in terms of working as W2 employees  
11 for Livewire. So it was the company that was a holdings  
12 company that would do litigation as well as distribution.  
13 That is what they told me.

14 THE COURT: And you were a W2 employee?

15 THE WITNESS: That's correct. And I still have  
16 not been paid for that position.

17 Q BY MR. WAXLER: That was for a period of two months;  
18 correct?

19 A That's correct. And I gave him my notice early  
20 February essentially.

21 THE COURT: Where was Livewire's offices?

22 THE WITNESS: Livewire has an address of  
23 Washington DC address, but, obviously, I don't know if it  
24 has an office to be honest with you. It is just a matter  
25 of, kind of a cloud type office. It might be a situation

1 where -- I am just speculating right now.

2 THE COURT: You have never visited Washington DC  
3 offices?

4 THE WITNESS: No. I believe it is just a PO box  
5 over there. That is just a mailing address for them.

6 THE COURT: Did that form letter requesting  
7 payment of the settlement sums, did that letter change to  
8 reflect that payment now should be sent to Livewire at  
9 the Washington DC address?

10 THE WITNESS: Absolutely. It wasn't sent to me or  
11 anything like that. It was sent to that mailbox, and  
12 then I believe it would be sent back to somebody at some  
13 point somewhere. But that is the kind of issues that I  
14 started having, and along with a lot of other different  
15 issues. So I just decided to -- I asked them if I could  
16 go ahead and substitute out with Paul Duffy who had a  
17 license in California. I talked to Paul Duffy about  
18 that, he said sure, and then I proceeded to do that.

19 THE COURT: All right. So you substituted out.  
20 Now, how long were you general counsel for Livewire?

21 THE WITNESS: Two months basically. I mean, I  
22 guess you could say, I think the official documents were  
23 signed. It never actually specified that I was in house  
24 counsel, but that is what I was told. The documents were  
25 just general employment documents, but that was from I

1 think January 7th on. That's when I signed the  
2 documents.

3 Q BY MR. WAXLER: You were not general counsel. You  
4 were in house counsel; right?

5 A In house counsel. Sorry.

6 Q You have never held the position of general  
7 counsel, have you?

8 A No.

9 THE COURT: Did you know about any other employees  
10 there?

11 THE WITNESS: Yes.

12 THE COURT: Was there a bookkeeper or an  
13 accountant?

14 THE WITNESS: Yes.

15 THE COURT: Do you know whether -- well, okay.

16 Thank you.

17 MEMBER OF THE AUDIENCE: Your Honor?

18 THE COURT: You are?

19 MEMBER OF THE AUDIENCE: Jason (inaudible). I  
20 represent Godfread and Cooper in some of the defamation  
21 cases.

22 THE COURT: You represent Godfread?

23 MEMBER OF THE AUDIENCE: Yes.

24 THE COURT: So back in Minnesota, lawyers have  
25 lawyers?

1 MEMBER OF THE AUDIENCE: I am from Massachusetts.

2 THE COURT: And how can I help you?

3 MEMBER OF THE AUDIENCE: I had a conversation with  
4 Mr. Gibbs probably back in October regarding AF Holdings  
5 where he told me that he was national counsel for AF  
6 Holdings and that any settlement negotiations were to be  
7 made through him. And the local counsel for that case  
8 confirmed that he was the one who told me to contact  
9 Mr. Gibbs.

10 THE COURT: Have you come to understand as have I  
11 that every representation made by a lawyer associated  
12 with Prenda is not necessarily true?

13 MEMBER OF THE AUDIENCE: I have known that for  
14 three years.

15 THE COURT: Okay. Good. So you aren't shocked,  
16 are you?

17 MEMBER OF THE AUDIENCE: No.

18 THE COURT: Nor am I, but thank you.

19 MEMBER OF THE AUDIENCE: You are welcome.

20 Q BY MR. WAXLER: Mr. Gibbs, you know you are under  
21 penalty of perjury testifying here today?

22 A That is correct.

23 Q Have you ever made a representation to a court in  
24 the Central District of California or any other court  
25 that you know is untrue?

1 A No.

2 THE COURT: Well, that isn't exactly accurate, is  
3 it? You have caused documents to be filed with, let's  
4 just be kind and say falsified signatures.

5 THE WITNESS: Your Honor, I had no idea that these  
6 were allegations --

7 THE COURT: That is "yes" or "no".

8 THE WITNESS: Your Honor, I think it is still an  
9 open question.

10 THE COURT: Oh. No. It is not an open question.  
11 We have had the individual testify under oath. Those  
12 were not his signatures on these documents.

13 THE WITNESS: And that is the first time I have  
14 heard in terms of him saying out loud that he absolutely  
15 did not sign those papers, those exact papers. He said  
16 before he was not associated with the companies, but that  
17 is the first time I heard him say he did not sign those  
18 exact papers.

19 THE COURT: Are you saying that you have had prior  
20 conversations with him where he either admitted or  
21 tacitly admitted that he signed?

22 THE WITNESS: No, your Honor. I haven't had any  
23 conversations with Mr. Cooper.

24 THE COURT: That was my thought. I thought that  
25 you had never met the man.

1 THE WITNESS: No. I never met the man. He never  
2 met me, and I have never talked with him.

3 THE COURT: And you were acting on the  
4 representation of John Steele that --

5 THE WITNESS: And Paul Hansmeier.

6 THE COURT: -- that they actually had the  
7 signatures, the authentic signature of the real Alan  
8 Cooper?

9 THE WITNESS: Yes. I was told that. And I  
10 investigated that in terms of, you know, what is going on  
11 here when the first Alan Cooper issue arose, and I was  
12 told that there was no issue, that he -- that he did sign  
13 the document. And so I also did a little bit of research  
14 and found out that the assignor, even if the assignor is  
15 invalid, it still is a valid document. So combining  
16 those two things, I still believed -- I don't think I  
17 filed a case after that. It was just a matter of kind of  
18 addressing with these guys, and they were my sole  
19 information for this type of thing.

20 THE COURT: Okay. You also indicated that you had  
21 on file the original or notarized signature of Alan  
22 Cooper, but you really don't, do you?

23 THE WITNESS: No. No. I never said I had on  
24 file. No. Prenda law or Steele Hansmeier had it on  
25 file. They told me they had it on file, and that is I

1 believe what was in the declaration. So I said, okay,  
2 you know, do we have this notarized copy, do you guys  
3 have it over there? I don't think I ever saw it, but  
4 they told me, yes, we have copies of this, it is here,  
5 and you can go ahead and file that based on our  
6 representation to you.

7 THE COURT: Do you feel like you have been duped  
8 by Hansmeier and Steele?

9 THE WITNESS: In a way, yes.

10 THE COURT: Okay. This has been very  
11 enlightening.

12 Q BY MR. WAXLER: Mr. Gibbs -- I just have a few more  
13 your Honor. Mr. Gibbs, have you ever been a 30(b)(6)  
14 witness for AF Holdings?

15 A No.

16 Q Have you ever been a 30(b)(6) witness for Ingenuity  
17 13?

18 A No.

19 Q Have you ever received client funds in any of your  
20 capacities as counsel affiliated with Steele Hansmeier or  
21 Prenda Law?

22 A No.

23 Q The court expressed some disappointment in the  
24 manner in which you described how you determined the  
25 location of the houses that sat on the lots, and the



1 router, the ability for the router to pick up people who  
2 were not authorized to pick up that signal. And let me  
3 ask you some questions about that.

4 A Sure.

5 Q It is your understanding that when wireless routers  
6 are used and they determine what the distance is where  
7 they would be able to pick up a signal, that those  
8 determinations are made where there is an open field and  
9 not placed in the middle of a structure?

10 A Yeah. I have read some reports on that and that  
11 the projections are basically favorable to them because  
12 there is no obstacles in the middle, there is nothing  
13 like walls or fences or bushes or trees which have a  
14 great effect on wireless signals.

15 Q Tell me how you described the Denton residence and  
16 what facts you had to support your description of the  
17 Denton residence?

18 THE COURT: Which city? Is this Santa Maria or  
19 West Covina?

20 THE WITNESS: I believe it is the second one.

21 MR. WAXLER: I will find it, your Honor.

22 MR. PIETZ: Your Honor, I might suggest we look at  
23 Exhibit II which is the picture, the geographical Google  
24 maps picture of the two residences.

25 THE COURT: That is why I wanted to know. I mean,

1 I went to Google Earth as well, and I just want to know  
2 which one we are talking about because in West Covina,  
3 you made some representations of fact that you cannot  
4 possibly know to be true.

5 THE WITNESS: Well, your Honor, based on my  
6 personal knowledge of wireless networks, I believed they  
7 were true.

8 THE COURT: I am talking about of the residence  
9 itself. It is a gated community.

10 I'm sorry. I didn't mean to interrupt you.

11 MR. WAXLER: I am happy to address that, your  
12 Honor.

13 Q Mr. Gibbs, the map that you have seen that was  
14 offered by Mr. Gibbs and Mr. Pietz -- and I apologize if  
15 I am butchering your name, by the way --

16 MR. PIETZ: Pietz.

17 MR. WAXLER: Pietz.

18 Q That is not the type of map that you saw; correct?

19 A No, that is not.

20 Q Please describe the map that you looked at when you  
21 made the representations in the filings that we have done  
22 in this courthouse.

23 A It was a map that you could go down the street, it  
24 is actually focused on the house, not on an overview like  
25 that, but it is on, basically, there is like a street

1 view on Google that allows you to, like, look around the  
2 house essentially. Kind of. It is limited to a certain  
3 extent though.

4 Q What did you see when you looked at that map?

5 A I saw a house that I believed it was likely not  
6 something that wifi could have broadcasted out to  
7 neighbors.

8 Q Did you see a gate?

9 A I did see a gate.

10 Q Did you see several structures?

11 A I did.

12 Q Did you see bushes and shrubs and trees around,  
13 between the house structure and the street where someone  
14 might be driving by?

15 A I did. Actually, the aerial view, I think, is even  
16 covering the house if I remember correctly. So, yeah, it  
17 is -- I mean, in terms of trees, there is a lot of trees  
18 there.

19 Q And it is your understanding that the wireless  
20 signal doesn't just fly over these trees, does it?

21 A No. Actually, I mean, there is just certain things  
22 that -- I mean, I think everyone kind of knows when they  
23 go into certain people's houses and say, hey, I want to  
24 use the wifi connection, there are certain rooms in the  
25 house that don't get, even in the same house that don't

1 get the wifi connection. So, yes, walls, trees, these  
2 things definitely have a dramatic effect. Sometimes,  
3 concrete wall, for instance, sometimes it just altogether  
4 stops something. That is my understanding of it.

5 Q Was your description of the residence in West  
6 Covina when you signed your declaration and submitted  
7 these papers and we submitted these papers on your behalf  
8 accurate to the best of your knowledge.

9 A Yes, it was. It was based on my personal  
10 knowledge. Yes.

11 Q And do you still believe it is accurate despite the  
12 very different map that was submitted to the court?

13 A That is correct. I believe that map might be -- I  
14 don't even know where the yards come, or I don't know how  
15 that works.

16 Q Would the same be true for the residence in Santa  
17 Maria?

18 A It was the same analysis essentially. It was just  
19 part of the full analysis, but yeah.

20 Q In other words, there were walls, there were  
21 buildings, there were shrubs, all of which would block  
22 the signal and reduce by a great extent the range of the  
23 wireless network?

24 A Yes. That was my impression from them, the street  
25 maps from Google.

1 MR. WAXLER: May I have one moment, your Honor?

2 THE COURT: Certainly.

3 Q BY MR. WAXLER: Mr. Gibbs, did you knowingly violate  
4 the discovery orders from this court?

5 A No.

6 Q Did you cause to be served on the ISP providers the  
7 October 19, 2012 discovery order by this court?

8 A Yes. I mean, at least, I thought I did. I had  
9 requested it.

10 Q And it was your understanding that that was done?

11 A It was my understanding. I confirmed it  
12 afterwards, and they said it was taken care of.

13 Q And the first time you learned that an ISP may not  
14 have received a copy of that order was when?

15 A I believe it was in the response by the ISP, AT&T  
16 possibly.

17 MR. WAXLER: I have nothing further, your Honor.  
18 Thank you.

19 THE COURT: Okay. Thank you. But you started  
20 getting responses from some of the Internet service  
21 providers, didn't you?

22 THE WITNESS: I didn't get the responses.

23 THE COURT: All right. You filed a status report  
24 with the court?

25 THE WITNESS: Yes.

1 THE COURT: Right?

2 THE WITNESS: Yes.

3 THE COURT: And at the time you filed that status  
4 report, there had been no returns on those subpoenas;  
5 right?

6 THE WITNESS: Yes.

7 THE COURT: Then about a week later --

8 THE WITNESS: Well, sorry, let me qualify my  
9 answer. There were -- at that point, there was nothing  
10 in the computers that showed there was any returns on the  
11 subpoenas.

12 THE COURT: Okay. That changed a few days later.

13 THE WITNESS: It changed, I think, on the 7th.  
14 Yes.

15 THE COURT: And, of course, you updated that  
16 status report, you advised the court, then -- right --  
17 that suddenly, for whatever reason, people are now  
18 starting to send you information on your subscribers;  
19 right? You updated your filing, didn't you?

20 Actually, no, you didn't.

21 THE WITNESS: I didn't, your Honor, but if I can  
22 explain why.

23 THE COURT: Yes.

24 THE WITNESS: Okay. So I did some investigation  
25 on that, and what I was told, and, again, I don't handle

1 the subpoenas. These are handled out of the Chicago and  
2 Minnesota offices. I was told that these things are  
3 usually delivered and that either hand-delivered or I  
4 believe mailed but most likely they are just a few blocks  
5 away. Like CT Corporation is just a few blocks away,  
6 that CT Corporation would send, mail back the  
7 information.

8 I didn't realize that that information was  
9 faxed back by Verizon. I never knew that. And I did  
10 some investigation on it. And I, also, I talked to Paul  
11 Duffy, and the exact date of the court's order in that  
12 case, there had been -- he had had some eye surgery and  
13 he also had some trauma related to it.

14 So what he said was he wasn't picking up his  
15 mail as frequently during that time period. So I thought  
16 that the information had been received essentially by,  
17 through his mailbox at that point but hadn't been input  
18 in the computer until later. So that was my  
19 understanding. That was my understanding of what had  
20 happened.

21 Q BY MR. WAXLER: Do you now regret not advising the  
22 court when you learned on November 7th that Prenda Law  
23 had received information in response to those subpoenas  
24 and that there was information in the status report that  
25 was not correct?

1 A Absolutely. Absolutely.

2 MR. WAXLER: Thank you, your Honor.

3 THE COURT: Mr. Pietz.

4

5 CROSS-EXAMINATION

6 BY MR. PIETZ:

7 Q Mr. Gibbs, I would ask you to refer to the binder  
8 that is there with you to Exhibit EE which is the  
9 substitution of counsel that was filed apparently with  
10 your CM/ECF account listing you as in house counsel for  
11 AF Holdings.

12 A Yes, I am familiar with that document.

13 Q So Mr. Gibbs, just to clarify, then, your testimony  
14 is that when you filed that document, that was an  
15 accurate representation -- correct -- that you were at  
16 that moment in house counsel for AF Holding?

17 A When I filed that document, I believed I was. What  
18 I was told afterwards and after the deposition was that  
19 that merger or that acquisition hadn't happened therefore  
20 it was still owned by the trust. So I, essentially, I  
21 had been told to go ahead and file as in house counsel,  
22 but, for some reason, Livewire didn't own AF Holdings at  
23 that time.

24 Q So can you just pin down for me exactly when it was  
25 that your capacity as in house counsel for AF Holdings



1 begun and exactly when it terminated?

2 A Well, my understanding was that -- my understanding  
3 when I was told that I was in house counsel for Livewire  
4 that I was therefore in house counsel for AF Holdings and  
5 the other companies as well, Ingenuity and Guava.

6 And only did I find out later when I was  
7 exiting and I was already leaving all these cases  
8 essentially, only then, I found out that they had not  
9 actually acquired -- Livewire had not acquired AF  
10 Holdings according to Mr. Hansmeier.

11 Q Mr. Gibbs, have you ever authorized anyone else to  
12 use your CM/ECF password?

13 A I don't -- I might have. I don't know.

14 Q Who?

15 A An individual by the name of Carl. He worked for  
16 me, or he worked with me, I guess you would say. He  
17 actually worked for Prenda Law.

18 Q How about John Steele?

19 A No. I don't think so. Not to my knowledge. I am  
20 not saying -- in terms of authority, I did not, no.

21 Q How about Paul Hansmeier, did you ever authorize  
22 him to use your CM/ECF password?

23 A I don't believe so. I mean, I know he had my -- he  
24 had access to my passwords at one point, so he might  
25 have, yeah.

1 Q What was your business telephone number while you  
2 worked for Prenda Law?

3 A It was (415)325-5900.

4 Q And what was your business e-mail address when you  
5 worked for Prenda Law?

6 A It was blgibbs@wefightpiracy.com.

7 Q Have you ever instructed Prenda local counsel to  
8 file pleadings using your business e-mail and business  
9 telephone number on the pleadings even though it was  
10 their name and physical address?

11 A So, yes, my name is on -- my e-mail address and my  
12 number and my phone number is on certain cases in other  
13 states. I was instructed to do so like that by Paul  
14 Hansmeier. And, essentially, the way that was explained  
15 to me was that I would essentially forward all of the  
16 communications to the outside counsel. Yeah. So.

17 MR. PIETZ: Before we move on any farther, I would  
18 ask that Exhibit EE be admitted into evidence as Exhibit  
19 13.

20 Q Mr. Gibbs, I have some copies of a few different  
21 complaints, one that was filed by a local counsel in  
22 Nebraska and three complaints filed by local counsel in  
23 Florida all of which list the name of the local counsel,  
24 a mailing address in those respective states and an  
25 e-mail address, blgibbs@wefightpiracy.com and your 415

1 telephone number, is that consistent with your  
2 understanding of what the normal practice was at Prenda  
3 that your business e-mail and phone would be on pleadings  
4 all around the country?

5 MR. WAXLER: Objection. Irrelevant, your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: That was what I was instructed to do  
8 by Prenda, yeah, was to do that because I was essentially  
9 helping those guys out on their cases. It was their  
10 case, but, yes.

11 Q BY MR. PIETZ: I would ask Mr. Ranallo to pass out  
12 No. 2 which is the declaration of Matt Catlett, an  
13 attorney in Nebraska, and he is authenticating the  
14 service copy of the complaint filed in Nebraska listing  
15 Mr. Gibbs. I would ask that that be admitted into  
16 evidence as Exhibit 14.

17 Similarly, Mr. Ranallo, if you would be so  
18 kind as to pass out 3, 4 and 5 which are the complaint in  
19 Sunlust v. Nguyen, First Time Video. Here is Sunlust v.  
20 Nguyen. That is Middle District, Florida. We also have  
21 First Time Videos v. Paul Uphold and Openmind Solutions  
22 v. Barry Wolfson.

23 MR. WAXLER: Your Honor, I would object to the  
24 introduction of those exhibits.

25 THE COURT: Right. We don't need this. We have

1 basically got his testimony.

2 MR. PIETZ: Fair enough.

3 THE COURT: And we have got the testimony on the  
4 reason why, but I got to tell you, that doesn't sound  
5 reasonable to me that you would be inviting telephone  
6 calls, litigation in Florida on a case that you know  
7 nothing about. How do you field these calls?

8 THE WITNESS: No, sir. I would pass the messages  
9 on to the other attorneys.

10 THE COURT: Back to Florida?

11 THE WITNESS: Yes. I would pass the messages on  
12 to them because, essentially, it was just easy for them  
13 at that point. I was like their secretary essentially,  
14 and that is the way that Prenda wanted to do it.

15 THE COURT: Why?

16 THE WITNESS: I don't know. I mean, they changed  
17 the practice at some point where people were putting  
18 their own e-mails, their own numbers, but I don't know  
19 why that was the way it was structured originally.

20 And I don't know. I mean, I don't know who  
21 had access to my e-mail either. So I don't know, like, I  
22 have no idea if I was sent something or if someone else  
23 read it.

24 Q BY MR. PIETZ: Did John Steele have access to your  
25 e-mail?

1 A He did. I don't know if he did throughout, but he  
2 did.

3 Q Would he routinely respond to e-mail inquiries at  
4 the blgibbs@wefightpiracy.com e-mail address?

5 A I never knew it because he didn't CC me on them, or  
6 he didn't let me know he was doing them. But I believe  
7 he did.

8 Q Did Paul Hansmeier have access to that e-mail  
9 address?

10 A I think he had access. I have no idea whether he  
11 used it or not.

12 Q How about Mr. Duffy, Paul Duffy, did he have access  
13 to that e-mail account?

14 A I don't think so.

15 Q Mr. Gibbs, earlier, you testified that some things  
16 were sent out with your signature stamped on there that  
17 didn't have your approval. I would like to refer now --  
18 actually, before I venture any farther afield, I would  
19 ask that the court take judicial notice of the complaints  
20 I have just identified as Exhibits, I think, 15, 16 and  
21 17.

22 In any event, moving on, now, to what has been  
23 previously identified in this action as Exhibit X, ask  
24 that it be admitted now as Exhibit 18.

25 Essentially, I would just like to ask you a

1 question to confirm.

2 A Sure.

3 Q Is this the kind of letter you are talking about?

4 This was a demand letter sent in the Guava, St. Clair

5 County, Illinois case. I note that it is dated -- what

6 is the date on it? January 30th. And it is,

7 essentially, a, you know, a demand letter. And then I

8 will go to the last page there. It has a pleading in

9 there. So, in any event, on the last page of the letter

10 itself, there is a stamped signature, what appears to be

11 a stamped signature that says Brett Gibbs. Is it your

12 testimony that this letter was sent out without your

13 authorization?

14 A That is my testimony.

15 Q You had no knowledge whatsoever that this letter

16 was being sent out?

17 A No. Not with my name on it. I don't even

18 remember -- no one ever told me about this before I found

19 out. I actually found out through an opposing counsel

20 that contacted me and wrote me a letter saying,

21 basically, you know, you have nothing on my client, and

22 you communicate through me. So I was kind of confused,

23 but I eventually saw the letter, and it had my stamped

24 signature on it.

25 Q Mr. Gibbs -- I will represent to the court that

1 this letter has been sent to over 300 Internet users  
2 across the country. Have you done anything to correct  
3 the fact that this letter went out with your signature on  
4 it without your authorization? I note that it was filed  
5 in late January.

6 A Yeah. I actually talked with Mark Lutz, and Mark  
7 said, I said, Mark, do not send any of these letters out  
8 anymore that are, you know, please contact me and let me  
9 know what is happening before you send out these letters.  
10 And the response from Mr. Lutz was I don't control those  
11 types of things, you have to talk with Paul and John.

12 Q Fair enough. Mr. Gibbs, have you ever hired local  
13 counsel for Prenda Law?

14 A Actually, the hiring, no, because the hiring  
15 process was done by John Steele.

16 Q Are you familiar with an attorney in Florida named  
17 Matthew Wasinger?

18 A Yes. Yes.

19 Q Are you aware of the fact that Mr. Wasinger  
20 testified under oath in federal court in Florida at the  
21 Sunlust hearing that you hired him and that, as far as he  
22 understood, you were a principal of Prenda law? Are you  
23 aware of that, Mr. Gibbs?

24 MR. WAXLER: Objection, your Honor. It is  
25 irrelevant. It is also hearsay.

1 MR. PIETZ: I am asking Mr. Gibbs if he is aware  
2 of it.

3 THE COURT: Sustained. I have got the picture.  
4 Okay. And I appreciate it. Thank you.

5 MR. PIETZ: I will move along, your Honor.

6 THE COURT: Okay. To what? Give me a blueprint.

7 MR. PIETZ: Fair enough, your Honor. I will  
8 explain the broad strokes of the categories I have, and  
9 whatever the court is interested in, we will move to  
10 that.

11 In addition to a few more things about  
12 Mr. Gibbs hiring, firing and even threatening local  
13 counsel, I have evidence on him being delegated  
14 independent authority to settle cases which he actually  
15 concluded. Contrary to Mr. Gibbs' assertion which is a  
16 little confusing in light of the fact that he says I  
17 spoke to Mark Lutz, in any event, with respect to his  
18 assertion that he never had any direct client contact, I  
19 have a number of documents which actually show -- some of  
20 which are Mr. Gibbs' own prior words showing that, in  
21 fact, at least according to him, he was communicating  
22 back and forth with the client, whatever that means, and  
23 my theory is that that may mean John Steele.

24 But in any event, beyond the direct client  
25 interaction, you know, I could ask Mr. Gibbs about his



1 investigation in the case, about the petition, but those  
2 are the broad strokes, your Honor. If the court has got  
3 the picture, I don't need to necessarily get into all the  
4 documents.

5 THE COURT: I do have the picture, and I know who  
6 the client is. We have talked about the client, and the  
7 client has been running everything. Yeah, I know who the  
8 client is.

9 MR. PIETZ: Very good.

10 THE COURT: Okay. Thank you.

11 Gentlemen. Mr. Brodsky, you look bored.

12 MR. BRODSKY: I am not bored, your Honor.

13 THE COURT: All right.

14 MR. WAXLER: We have no further questions, your  
15 Honor.

16 THE COURT: All right.

17 Unless anyone has anything else in terms of  
18 evidence to offer, the matter will stand submitted. All  
19 right.

20 Thank you, sir. You may step down?

21 THE WITNESS: Thank you, your Honor.

22 THE COURT: Good luck to you.

23 All right. How about this, I will leave this  
24 up to counsel, if you wish. If you would like to sum up  
25 your position, you may do so at this time. It is not

1 necessary. I am just making that offer.

2 MR. WAXLER: Thank you, your Honor for giving us  
3 the opportunity to clear Mr. Gibbs' name, and what I  
4 would like to add to the declarations that he has  
5 submitted and the papers that we have submitted is that  
6 Mr. Gibbs did not intend to disrespect this court or  
7 disobey any orders of this court. Mr. Gibbs had no  
8 knowledge that perhaps others may have knowingly or  
9 unknowingly disregarded some orders of this court in  
10 terms of the service of the knowledge of the October 17th  
11 order.

12 The order itself, you know, did not require  
13 service on the ISP's, but that was what Mr. Gibbs wanted  
14 to do. And that is the undisputed testimony here today  
15 that that is what he wanted to do was to have those ISP's  
16 notified of that. And he took no action whatsoever, your  
17 Honor, to do discovery, formal discovery of those ISP's  
18 or ask the ISP's to follow-up on the information  
19 provided.

20 So Mr. Gibbs stands before you, your Honor, he  
21 is I think we could say humbled by this experience, and I  
22 think he is regretful that he has perhaps been put in a  
23 position where the court at least in the original OSC  
24 made comments suggesting that he was a culpable party  
25 here. And he is not, your Honor. And I hope you see it

1 that way too.

2 And I thank you very much for your time.  
3 Appreciate the opportunity you have given us to clear his  
4 name.

5 THE COURT: Thank you, counsel.

6 Anything from this side? You don't have to.

7 MR. PIETZ: I will keep it very brief, your Honor.

8 I can appreciate that there may be more  
9 parties, other people who are more culpable than  
10 Mr. Gibbs with respect to what has occurred in these  
11 cases. However, I think the assertion that Mr. Gibbs is  
12 merely an independent contract attorney is simply not  
13 credible. I would just simply leave it at this, there is  
14 ample evidence showing that Mr. Gibbs was been involved  
15 since day one or at least very shortly thereafter on a  
16 key level exercising operational control over this  
17 litigation on a national basis.

18 So while I am sympathetic that perhaps to a  
19 certain extent, maybe there are other people more  
20 culpable, I will just leave it that certainly there is  
21 ample evidence showing that Mr. Gibbs indeed played a key  
22 role in all of this.

23 Thank you, your Honor.

24 THE COURT: Okay. I just have one question,  
25 gentlemen. As a licensed attorney in this state,

1 particularly when it is only your name on the pleadings,  
2 don't you think you have some responsibility to assure  
3 the accuracy of those pleadings? Or is it permissible  
4 simply to go they told me to do so or the senior partner  
5 said it is okay, it may not have sounded right to me, but  
6 they said it was okay. Could you do that really?

7 MR. WAXLER: Your Honor, I am going to suggest  
8 that that is not what happened on a key issue.

9 THE COURT: Okay.

10 MR. WAXLER: On a key issue, the issue involving  
11 Alan Cooper, there was not one shred of information that  
12 Alan Cooper wasn't Alan Cooper until Mr. Gottfried's  
13 letter in November of 2012 at which point Mr. Gibbs  
14 immediately questioned whether this was accurate or not.  
15 And the most important thing is that Mr. Gibbs filed no  
16 further pleadings after that time which purported to rely  
17 on Mr. Cooper being the assignee of AF Holdings. And so  
18 Mr. Gibbs reacted to the notion.

19 He investigated and he did nothing further on  
20 it. He was assured that Alan Cooper was Alan Cooper, but  
21 so he -- he did something other than said somebody told  
22 me. And on the other issues, your Honor, these were not  
23 examples of him relying on anybody else to do things that  
24 were improper. He was doing discovery. He was doing  
25 investigations. They were supervising him, but he was

1 acting like a California lawyer doing what he thought in  
2 his best judgment should be done as a California lawyer  
3 in these cases.

4 THE COURT: All right.

5 MR. WAXLER: Thank you.

6 THE COURT: Thank you, counsel.

7 All right. Again, the matter stands  
8 submitted. We are adjourned.

9 MR. WAXLER: Thank you, your Honor.

10 MR. PIETZ: Thank you, your Honor.

11 (Proceedings concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: March 17, 2013

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR

# 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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# Exhibit J

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE OTIS D. WRIGHT  
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

Ingenuity 13 LLC, )  
PLAINTIFF, )  
VS. ) NO. CV 12-8333 ODW  
John Doe, et al., )  
DEFENDANT, )  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
LOS ANGELES, CALIFORNIA  
TUESDAY, APRIL 2, 2013

\_\_\_\_\_  
KATIE E. THIBODEAUX, CSR 9858  
U.S. Official Court Reporter  
312 North Spring Street, #436  
Los Angeles, California 90012

1 APPEARANCES OF COUNSEL:

2

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-and-

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1 APPEARANCES: (Cont'd)

2

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LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 2, 2013

10:00 A.M.

- - - - -

THE CLERK: Calling Item No. 1, CR 12-8333, ODW, Ingenuity 13, LLC, versus John Doe, et al.

Counsel, please state your appearances.

MR. PIETZ: Morgan Pietz, P-I-E-T-Z, for the putative John Doe defendant in 12-CV-8333.

MR. RANALLO: And Nicholas Ranallo for the same Doe.

THE COURT: Morning, counsel.

MR. WAXLER: Andrew Waxler and Barry Brodsky, both for Brett Gibbs who is here today.

THE COURT: By the way, thank you for your submittal with respect to your efforts to effect service. Thank you.

MR. BAKER: Phil Baker and Dan Leonard specially appearing for Paul Hansmeier.

MR. LEONARD: Morning, your Honor.

MR. BAKER: And he is present today.

THE COURT: Where?

MR. BAKER: Mr. Hansmeier, will you stand up.

THE COURT: Front row.

1 MR. HALLORAN: Morning your Honor. My name is Tim  
2 Halloran, Thomas Mazzacco on behalf of John Steele who is  
3 also present.

4 THE COURT: Mr. Steele.

5 MR. STEELE: Yes.

6 MS. ROSING: Morning, your Honor. Heather Rosing  
7 with Klinedinst PC with my colleagues Phil Vineyard and  
8 Dave Majchrzak appearing on behalf of Paul Duffy, Angela  
9 Van Den Hemel and Prenda Law, and Mr. Duffy and  
10 Ms. Van Den Hemel are in the audience today.

11 THE COURT: Thank you.

12 Is that it?

13 MR. BAKER: Your Honor?

14 THE COURT: Yes.

15 MR. BAKER: There are other individuals pursuant  
16 to your order here. They are not represented.

17 THE COURT: Mark Lutz?

18 MR. BAKER: Yes, he is present.

19 MR. LUTZ: Yes.

20 THE COURT: Mr. Lutz, welcome, sir. Did Alan --  
21 well, do we have an Alan Cooper? Any Alan Cooper?

22 (No response.)

23 THE COURT: All right. Peter Hansmeier?

24 MR. HANSMEIER: Yes, your Honor.

25 THE COURT: Good morning, sir.



1 MR. HANSMEIER: Morning.

2 THE COURT: Any representatives of any other  
3 representatives of Prenda Law, Livewire Holdings, AF  
4 Holdings other than Mr. Lutz, Ingenuity 13 other than  
5 Mr. Lutz and 6881 Forensics, LLC.

6 MS. ROSING: Mr. Duffy is appearing on behalf of  
7 Prenda Law, your Honor.

8 THE COURT: All right. Here is my interest, and  
9 we can proceed in any way that seems to make sense. I am  
10 pleasantly surprised that we have everyone here.  
11 Otherwise, I was going to be forced to draw reasonable  
12 inferences from the facts as I know them.

13 It should be clear by now that this court's  
14 focus has now shifted dramatically from the area of  
15 protecting intellectual property rights to attorney  
16 misconduct such misconduct which I think brings discredit  
17 to the profession. That is much more of a concern now to  
18 this court than what this litigation initially was about.

19 Mr. Steele -- well, let me do it this way. I  
20 have questions of Mr. Steele. Mr. Steele can choose to  
21 answer those questions or not. The same applies for  
22 Mr. Duffy and Mr. Hansmeier.

23 Now, as the attorneys, how do you all propose  
24 we proceed?

25 MR. BAKER: May I take the podium, your Honor?

1 THE COURT: Well, actually, we don't have one, but  
2 we do have a lecturn and you are free to use it.

3 MR. MAZZUCCO: Thomas Mazzucco on behalf of  
4 Mr. Steele.

5 Your Honor, in light of some of the  
6 information that was in the transcript of March 11th,  
7 2013 in this courtroom and some of the concerns that this  
8 court has mentioned, at this point in time, if Mr. Steele  
9 is called to testify, he is going to exercise his Fifth  
10 Amendment privilege against forced testimony.

11 And we state for two reasons, one, there were  
12 serious allegations made by the court and others of not  
13 just attorney misconduct but the word fraud was used  
14 several times in the transcript.

15 THE COURT: Should have been.

16 MR. MAZZUCCO: The next step is there is also an  
17 issue involving attorney-client privilege. If Mr. Steele  
18 was to testify, that privilege belongs to the client.

19 THE COURT: Which client might that be?

20 MR. MAZZUCCO: That would be several of his  
21 clients. Mr. Halloran is going to handle that part of  
22 the argument, but that is a two pronged argument, your  
23 Honor.

24 THE COURT: Are you talking about AF Holdings,  
25 Ingenuity 13, those clients?

1 MR. MAZZUCCO: Yes.

2 THE COURT: And you think there is a difference  
3 between those clients and Mr. Steele?

4 MR. MAZZUCCO: I think there is, your Honor, yes.

5 THE COURT: From what I know about this case,  
6 there is no difference at all, but that is why I am glad  
7 Mr. Steele is here. Maybe he can clarify some of those  
8 things, but if you say answering those kinds of questions  
9 would incriminate him, I'll take you at your word.

10 MR. MAZZUCCO: No, your Honor. I'm not saying  
11 they are going to incriminate him. I said it is his  
12 Fifth Amendment privilege against forced testimony.  
13 There was language on the record from March 11th where  
14 this court made some accusatory statements about fraud  
15 upon the court, things that were in the transcript.

16 THE COURT: Yes.

17 MR. MAZZUCCO: You leave my client with no  
18 alternative but.

19 THE COURT: To rebut those statements.

20 MR. MAZZUCCO: He can rebut those statements in  
21 the proper venue, your Honor. This is an order to show  
22 cause in front of this court.

23 THE COURT: Let's cut to the chase. I am really  
24 not interested in -- I want to know if some of my  
25 conjecture is accurate. The only way I can find out is

1 to have the principles here and answer those questions.

2 Now, if you say he will not answer those  
3 questions, then I will draw whatever inferences I think  
4 are reasonable from the facts as I know them. This is an  
5 opportunity for him to protect himself, to defend and  
6 protect himself. It is up to him. So you are saying he  
7 doesn't want to answer any questions, fine. I am not  
8 going to go through the charade of asking the questions  
9 and have him assert the Fifth.

10 MR. MAZZUCCO: Your Honor, he is not going to  
11 respond to your questions.

12 THE COURT: All right. Fine.

13 What about Mr. Hansmeier? What is his  
14 position, the same?

15 MR. BAKER: The exact same, your Honor.

16 THE COURT: All right. You may be seated.

17 Mr. Duffy.

18 MS. ROSING: Your Honor, Mr. Duffy and  
19 Ms. Van Den Hemel will also be taking the fifth  
20 amendment. Though, in response to your desire for  
21 additional information, I do have approximately 25  
22 minutes of argument, and I do have some exhibits that are  
23 judicially noticeable.

24 THE COURT: On what? Relevant to what?

25 MS. ROSING: To the seven issues pending before

1 this court.

2 THE COURT: Give me the Cliff Note version. Just  
3 give me a summary, what it is that you would like to --

4 MS. ROSING: Well, your Honor, what I would like  
5 to argue because my clients are entitled to a reasonable  
6 opportunity to be heard, we weren't allowed --

7 THE COURT: Excuse me. They are giving up that  
8 right to be heard. Now, what have you got to say that is  
9 under oath?

10 MS. ROSING: Well, your Honor, my arguments are  
11 legal arguments.

12 THE COURT: I know. I am looking for facts. I  
13 really am. I am not a looking for legal arguments.

14 MS. ROSING: Well, your Honor --

15 THE COURT: Can you tell me, for example, who  
16 directs the litigation here in California? Who makes the  
17 decision as to whether or not cases are dismissed or  
18 settled for how much money? Can you tell me that?

19 MS. ROSING: Your Honor, I can't testify.

20 THE COURT: "Yes" or "no", please. Because we  
21 need to move through this. Can you tell me that?

22 MS. ROSING: I personally cannot tell you that,  
23 your Honor.

24 THE COURT: All right. Do you know whether or not  
25 there is another Alan Cooper other than the one that was

1 here at the last hearing?

2 MS. ROSING: I am not aware of another Alan  
3 Cooper, your Honor.

4 THE COURT: All right. Good.

5 What happens to the settlement money?

6 MS. ROSING: Your Honor, obviously, I represent  
7 Mr. Duffy and Ms. Van Den Hemel. I don't have personal  
8 knowledge of any of this.

9 THE COURT: Why weren't notices of related cases  
10 filed? Who made the decision to hide from the court the  
11 fact that all of these cases were related.

12 MS. ROSING: I do have a judicially noticeable  
13 document on that, your Honor, where the Northern District  
14 declined to relate the cases.

15 THE COURT: That is a different thing. That is  
16 consolidating them.

17 MS. ROSING: It is actually an order declining to  
18 relate them.

19 THE COURT: Same plaintiff, same firm, same causes  
20 of action, and they are not related? Excuse me?

21 Okay. Tell me this. Who made the decision  
22 not to disclose to the court the fact that the law firms  
23 have a financial interest in the outcome of this  
24 litigation?

25 MS. ROSING: Your Honor, there is no evidence

1 before this court at all that the law firm or any, well,  
2 certainly, my clients, Paul Duffy or Angela Van Den  
3 Hemel, have any financial interest in the outcome of this  
4 litigation.

5 THE COURT: Excuse me. Did you read Hansmeier's  
6 deposition?

7 MS. ROSING: Yes, I did, your Honor.

8 THE COURT: And then you make the statement you  
9 just made?

10 MS. ROSING: Your Honor, there is no evidence that  
11 Mr. Duffy or Ms. Van Den Hemel who is a W2 paralegal at  
12 Prenda Law --

13 THE COURT: I understand that.

14 MS. ROSING: And I would be happy --

15 THE COURT: Wait a minute. The money goes to  
16 Prenda Law's trust account; right?

17 MS. ROSING: Your Honor, I have no personal  
18 knowledge, and I can't testify. But I do have an  
19 argument I would like to present to your Honor.

20 THE COURT: Relative to what? To anything I just  
21 asked?

22 MS. ROSING: Well, your Honor, it is a legal  
23 argument with some objections and some judicially  
24 noticeable documents.

25 THE COURT: Relative to what?

1 MS. ROSING: Well, the seven issues before the  
2 court, the Alan Cooper issue, the discovery order issue,  
3 the Wagar investigation, the Denton investigation, Form  
4 CV30, the relationships, and March 11, the things that  
5 are noticed in this court's OSC.

6 But, your Honor, we would be happy to submit  
7 this in a brief if that would be more --

8 THE COURT: Good. Do that. Thank you.

9 We are done.

10 (Proceedings concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: April 5, 2013

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR

# 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.



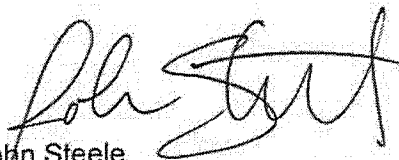
### Conclusion

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



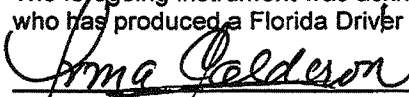
**AFFIDAVIT OF MARK LUTZ**

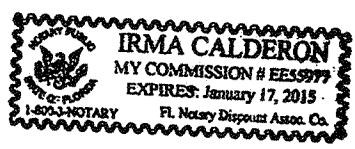
I, Mark Lutz, declare under penalty of perjury as true and correct:

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 Date 7/10/13

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).