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4 *Former Attorney for Plaintiff-Appellee*
5 *Ingenuity13 LLC*

6
7 IN THE UNITED STATES COURT OF APPEALS
8 FOR THE NINTH CIRCUIT
9

10	INGENUITY13 LLC,)	No. 13-55880
11)	
11	Plaintiff-Appellant,)	MOTION TO WITHDRAW AS COUNSEL
12	v.)	OF RECORD
12	JOHN DOE,)	
13)	
13	Defendant-Appellee.)	
14)	
14)	

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16 **TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS**
17 **FOR THE NINTH CIRCUIT AND TO ALL PARTIES TO THE WITHIN ACTION:**

18 Brett Langdon Gibbs hereby moves this Court pursuant to Ninth Circuit Local Rule 11(D) to
19 withdraw as counsel of record in the above-captioned matter. This motion is supported by good
20 cause for withdrawal as required by Local Rule 11(B) as laid out below and in the Declaration of
21 Brett Langdon Gibbs attached hereto as Exhibit A (hereinafter "Gibbs Decl."). At this time, per
22 Local Rule 11(D), Mr. Gibbs is unaware of the name and/or address of a substitute counsel. Also,
23 as required by Local Rule 11(D), Mr. Gibbs discloses the name and last known address of the
24 individual who is the purported CEO of Ingenuity 13, LLC in the Certificate of Service below.
25 Further, Mr. Gibbs attaches the "Notice of Appeal" filed and signed by Mark Lutz, "Corporate
26 officer for Ingenuity13, LLC," as Exhibit B.
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1 Mr. Gibbs has good cause to bring this motion based on several factors. First, he was
2 working as “Of Counsel” to Prenda Law, Inc., and later as in-house counsel employee of Livewire
3 Holdings, LLC, and, in those positions, Mr. Gibbs was the attorney of record for Ingenuity13, LLC
4 in the underlying lawsuit – i.e. *Ingenuity13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal.
5 Filed September 27, 2012). (Gibbs Decl. ¶ 2). On or around January 28, 2013, Mr. Gibbs filed a
6 voluntary dismissal without prejudice in the underlying district court case. As such, that case was
7 voluntarily dismissed and the case was officially “closed” as of January 28, 2013. (Gibbs Decl. ¶ 3)
8 Those actions terminated Mr. Gibbs’ role as counsel for Ingenuity13, LLC in the above-referenced
9 case. He was never re-engaged as counsel by Ingenuity13, LLC in this matter.
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11 Further, Mr. Gibbs does not currently work for Prenda Law, Inc. and/or Livewire Holdings,
12 LLC, and has not since February 28, 2013, the date on which he left these companies. (Gibbs Decl. ¶
13 4). His only representation of Ingenuity13, LLC was only through these companies. (Gibbs Decl. ¶
14 5). Ingenuity13, LLC was not Mr. Gibbs’ personal client; Mr. Gibbs was only acting on behalf of
15 Prenda Law, Inc. and Livewire Holdings, LLC in his representation. (Gibbs Decl. ¶ 6). When his
16 employment ceased, his representation of Ingenuity13, LLC did as well.
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18 Additionally, it appears that the filing clerk assumed that Mr. Gibbs was the appellate
19 attorney for Ingenuity13, LLC because this was represented by Mr. Lutz on the representation
20 statement filed in the district court. Mr. Gibbs did not sign the notice of appeal, which was signed
21 by Mark Lutz, and that Mr. Gibbs never entered his appearance in this appeal. (Gibbs Decl. ¶ 7).
22 Instead, it appears that a designation was given to him that he did not agree to accept.
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24 Also, notably, Mr. Gibbs is not being paid by either paid by Prenda Law, Inc., Livewire
25 Holdings, LLC, and/or Ingenuity13, LLC (or anyone else for that matter) for the representation of
26 Ingenuity13, LLC on appeal. (Gibbs Decl. ¶ 8). He is not being paid and no such fee agreement
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1 exists because he never agreed to be the appellate attorney for Ingenuity13, LLC on appeal. (Gibbs
2 Decl. ¶ 9).

3 Further, considering the sanctions order issued by the district court in *Ingenuity13 LLC v.*
4 *Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal. Filed September 27, 2012) where the court ordered
5 joint and several liability to be shared between Mr. Gibbs and Ingenuity13, LLC, amongst others, it
6 appears that a clear conflict of interest now exists between Mr. Gibbs and his former client. This
7 clear conflict prevents Mr. Gibbs from effectively representing Ingenuity13, LLC under the
8 circumstances.
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10 Next, in an order issued today in the underlying case, the court stated:

11 Finally, as a housekeeping matter, the Court requests Brett Gibbs to file requests
12 for withdrawal of attorney in this and the related cases. Brett Gibbs appears to
13 have withdrawn for these cases. (OSC Hr'g Tr. 87—8, Mar. 11, 2013 (“I am no
14 longer employed by Prenda or any other corporation or LLC that is involved in
15 these cases.”).) Given the circumstances and the relationship between Gibbs and
16 his *clients*, the Court will approve his requests for withdrawal. *Ingenuity13 LLC v.*
17 *Doe*, No. 2:12-cv-8333-ODW(JCx) Doc. #164, Pg. 2 (C.D. Cal. Filed September
18 27, 2012).

19 It appears that such affirmance from the district court also supports Mr. Gibbs’ exit from this case,
20 considering they are essentially the same cases and same considerations are presented.

21 Lastly, Mr. Gibbs does not want to be the attorney of record on appeal. He hopes that the
22 Court recognizes his inherent right as an attorney to choose his own clients. Ingenuity13, LLC has
23 been given written notice of this withdrawal. (Gibbs Decl. ¶ 10).

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1 For this good cause shown, Mr. Gibbs respectfully requests that this Court grant the instant
2 motion and relieve him as counsel of record for Defendant-Appellant Hard Drive Productions, Inc.
3 in this matter.

4 Respectfully Submitted,

5 **DATED: May 21, 2013**

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7 By: /s/ Brett L. Gibbs, Esq.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 21, 2013, all individuals of record who are deemed to have consented to electronic service are being served a true and correct copy of the foregoing document, and all attachments and related documents, using the Court's ECF system, in compliance with the Local Rules. The following service of Plaintiff-Appellant Ingenuity13, LLC was delivered by mail to the following addresses:

Ingenuity13, LLC
C/O Mark Lutz, CEO of Ingenuity13, LLC
2100 M. Street Northwest
Suite 170-417
Washington, D.C. 20037

/s/ Brett L. Gibbs
Brett L. Gibbs, Esq.