

1 Heather L. Rosing, Bar No. 183986
2 David M. Majchrzak, Bar No. 220860
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9 Specially Appearing for
10 JOHN STEELE; PAUL HANSMEIER;
11 PAUL DUFFY; and ANGELA VAN
12 DEN HEMEL

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

15 **INGENUITY 13 LLC,**
16 **Plaintiff,**
17 **v.**
18 **JOHN DOE,**
19 **Defendant.**

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

21 **NOTICE OF EX PARTE**
22 **APPLICATION FOR ORDER**
23 **WITHDRAWING ORDER FOR JOHN**
24 **STEELE, PAUL HANSMEIER, PAUL**
25 **DUFFY, AND ANGELA VAN DEN**
26 **HEMEL TO APPEAR**

27 Judge: Hon. Otis D. Wright, II
28 Magistrate Judge: Hon. Jacqueline Chooljian
Courtroom: 11

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

29 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

30 **PLEASE TAKE NOTICE** that John Steele, Paul Hansmeier, Paul Duffy, and
31 Angela Van Den Hemel specially appear to apply ex parte to this court for an order
32 withdrawing the order for them to appear on Monday, March 11, 2013. This
33 application is being made on an emergency basis because notice of the order to
34 appear was not served until yesterday, March 7, 2013 and John Steele, Paul
35 Hansmeier, Paul Duffy, and Angela Van Den Hemel all reside outside California.

36 The application is based upon this notice, the memorandum of points and
37 authorities, the declarations of John Steele and David M. Majchrzak, and the
38 proposed order filed concurrently herewith.

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Local Rule 7-19 contact information for other counsel

Counsel specially appearing for these ex parte applicants is aware of the following contact information for counsel of the parties in this action:

Brett Langdon Gibbs; 38 Miller Avenue, Suite 263, Mill Valley, California 94941; (415) 325-5900; blgibbs@wefightpiracy.com; for Plaintiff Ingenuity13 LLC.

Andrew J. Waxler and Won M. Park; 1960 East Grand Avenue, Suite 1210, El Segundo, California 90245; (310) 416-1300; awaxler@wcb-law.com and wpark@wcb-law.com; specially appearing for Brett Langdon Gibbs.

Morgan E. Pietz; 3770 Highland Avenue, Suite 206, Manhattan Beach, California 90266; (310) 546-5301; mpietz@pietzlawfirm.com; for Defendant John Doe.

Klinedinst PC

DATED: March 8. 2013

Bv: 
Heather L. Rosing
David M. Majchrzak
Specially Appearing for
JOHN STEELE; PAUL
HANSMEIER; PAUL DUFFY; and
ANGELA VAN DEN HEMEL

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9 Specially Appearing for
10 JOHN STEELE; PAUL HANSMEIER;
11 PAUL DUFFY; and ANGELA VAN
12 DEN HEMEL

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

15 **INGENUITY 13 LLC,**
16 **Plaintiff,**
17 **v.**
18 **JOHN DOE,**
19 **Defendant.**

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

21 **MEMORANDUM OF POINTS AND**
22 **AUTHORITIES IN SUPPORT OF EX**
23 **PARTE APPLICATION FOR ORDER**
24 **WITHDRAWING ORDER FOR JOHN**
25 **STEELE, PAUL HANSMEIER, PAUL**
26 **DUFFY, AND ANGELA VAN DEN**
27 **HEMEL TO APPEAR**

28 Judge: Hon. Otis D. Wright, II
Magistrate Judge: Hon. Jacqueline Chooljian
Courtroom: 11

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

I.

INTRODUCTION

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

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1 Here, because they are not parties in this action, Steele, Hansmeier, Duffy,
2 and Van Den Hemel can be nothing more than witnesses. California Code of Civil
3 Procedure section 1989 provides that “a witness . . . is not obliged to attend as a
4 witness before any court, judge, justice or any other officer, unless the witness is a
5 resident within the state at the time of service.” None of these individuals named in
6 the court’s March 5, 2013 reside in California. Decl. of Steel, ¶¶ 3-6. Thus, the
7 court lacks jurisdiction to order them to appear.

8 **III.**

9 **STEELE, HANSMEIER, DUFFY, AND VAN DEN HEMEL DID NOT**
10 **RECEIVE REASONABLE NOTICE OF THIS PROCEEDING**

11 Due process mandates that a respondent to a Rule 11 sanctions motion
12 receive reasonable notice of the sanctions being sought and the opportunity to
13 submit an opposition. Fed. R. Civ. P. 11(c)(1); Miranda v. Southern Pac. Transp.
14 Co., 710 F.2d 516, 522 (9th Cir. 1983). This applies equally to sanctions imposed
15 sua sponte by the court. So, before imposing sanctions, the court must issue an
16 order to show cause why the respondent has not violated Rule 11 and allow the
17 party to be heard. Fed. R. Civ. P. 11(c)(3); Simmerman v. Corino, 27 F.3d 58, 64
18 (3rd Cir. 1994); Marlin v. Moody Nat’l Bank, N.A., 533 F.3d 374, 379 (5th Cir.
19 2008).

20 Although counsel submitting this application has been unable to identify any
21 authority addressing the notice requirements to witnesses ordered to appear at such
22 hearings, logic dictates that such individuals should at least be similarly
23 accommodated with reasonable notice. Here, the court’s March 5, 2013 order that
24 notice be provided by March 7, 2013 to attend a March 11, 2013 hearing with no
25 further information is fundamentally unreasonable.

26 As set forth above, all of the witnesses that the court has ordered to appear
27 reside out-of-state. And all of them are employed within the legal services
28 industry. As such, providing two to three days’ business notice that they need to

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1 travel across the country for a hearing in a case they have not been part of is
2 inherently unreasonable in that it could adversely impact their clients.

3 Further, the notice that they appear was absent any information regarding the
4 reason for their appearance. Presumptively, it would be to provide testimony, but
5 the court has issued no order identifying what the scope of that testimony might be.
6 Without such notice, the witnesses may not properly prepare and are, therefore,
7 deprived of due process.

8 Finally, witnesses are entitled not only to receive payment for their
9 attendance, but also for travel expenses. 28 U.S.C. § 1821 (2013). But, the court’s
10 order not only fails to provide who will compensate Steele, Hansmeier, Duffy, and
11 Van Den Hemel for their time and these expenses, but that they will be
12 compensated at all. Given the considerable expense of traveling such distances
13 (including consideration of the fact that one of the witnesses likely has limited
14 means given her employment as a paralegal), especially on such short notice when
15 many common carriers may not have seats available, this is a significant issue.

16 For these reasons, even if the court had jurisdiction over the parties, the
17 notice would be unreasonable to them and the court would, at a minimum, have to
18 withdraw the order and issue a new one for a future date that would afford Steele,
19 Hansmeier, Duffy, and Van Den Hemel reasonable notice of the hearing, their
20 rights, and the purpose for their appearance.

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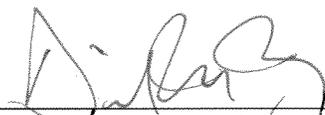
IV.

CONCLUSION

The court does not have jurisdiction to order out-of-state residents Steele, Hansmeier, Duffy, and Van Den Hemel to appear as witnesses at a hearing. And, even if it did, the notice that court provided for parties to travel across the country was incomplete and inadequate. For these reasons, the court should withdraw its March 5, 2013 ordering these individuals to appear in California on March 11, 2013.

Klinedinst PC

DATED: March 8. 2013

Bv: 
Heather L. Rosing
David M. Majchrzak
Specially Appearing for
JOHN STEELE; PAUL
HANSMEIER; PAUL DUFFY; and
ANGELA VAN DEN HEMEL

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

Ingenuity 13 LLC

CASE NUMBER:
2:12-cv-8333-ODW(JCx)

PLAINTIFF(S)

v.

John Doe

DEFENDANT(S).

NOTICE OF MANUAL FILING

PLEASE TAKE NOTICE:

Pursuant to Local Rule 5-4.2, the following document(s) or item(s) are exempt from electronic filing, and will therefore be manually filed (**LIST DOCUMENTS**): NOTICE OF EX PARTE APPLICATION FOR ORDER WITHDRAWING ORDER FOR JOHN STEELE, PAUL HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN HEMEL TO APPEAR; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION; DECLARATION OF DAVID M. MAJCHRZAK IN SUPPORT OF EX PARTE APPLICATION; DECLARATION OF JOHN STEELE IN SUPPORT OF EX PARTE APPLICATION; [PROPOSED] ORDER TO WITHDRAW ORDER FOR JOHN STEELE, PAUL HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN HEMEL TO APPEAR; PROOF OF SERVICE

Document Description:

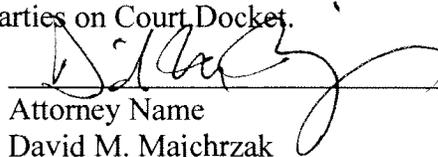
- Administrative Record
- Exhibits
- Ex Parte Application for authorization of investigative, expert, or other services pursuant to the Criminal Justice Act [see Local Rule 5.2-2.2(8), Local Criminal Rule 49.1-2(8)]
- Other

Reason:

- Under Seal
- Items not conducive to e-filing (i.e., videotapes, CDROM, large graphic charts)
- Electronic versions are not available to filer
- Per Court order dated _____
- Manual Filing required (*reason*):
Specially Appearing Parties. Not listed as parties on Court Docket.

March 8, 2013

Date



Attorney Name

David M. Majchrzak

Party Represented

Specially Appearing, JOHN STEELE, PAUL HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN HEMEL

Note: File one Notice of Manual Filing in each case, each time you manually file document(s).

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9 Attorneys for Defendants
10 JOHN STEELE; PAUL HANSMEIER;
11 PAUL DUFFY; and ANGELA VAN
12 DEN HEMEL

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 INGENUITY 13 LLC,
16 Plaintiff,
17 v.
18 JOHN DOE,
19 Defendant.

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

**DECLARATION OF JOHN STEELE IN
SUPPORT OF EX PARTE
APPLICATION FOR ORDER
WITHDRAWING ORDER FOR JOHN
STEELE, PAUL HANSMEIER, PAUL
DUFFY, AND ANGELA VAN DEN
HEMEL TO APPEAR**

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

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

20 I, John Steele, declare as follows:

21 1. I am an attorney at law duly licensed to practice before the courts of
22 the State of Illinois. I am of counsel with the law firm, Prenda Law, Inc.

23 2. I have personal knowledge of the following facts and, if called upon
24 as a witness, could competently testify thereto.

25 3. I reside in the State of Florida. I both live in the State of Florida and
26 intend to remain living in Florida. Although I make infrequent appearances in
27 Illinois to perform legal services, I do not provide any legal services in either

28 California or Florida

- 1 -

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8 dmajchrzak@klinedinstlaw.com

9 Attorneys for Defendants
10 JOHN STEELE; PAUL HANSMEIER;
11 PAUL DUFFY; and ANGELA VAN
12 DEN HEMEL

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

15 **INGENUITY 13 LLC,**
16 **Plaintiff,**
17 **v.**
18 **JOHN DOE,**
19 **Defendant.**

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

DECLARATION OF DAVID M. MAJCHRZAK IN SUPPORT OF EX PARTE APPLICATION FOR ORDER WITHDRAWING ORDER FOR JOHN STEELE, PAUL HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN HEMEL TO APPEAR

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

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

20 I, David M. Majchrzak, declare as follows:

21 1. I am an attorney at law duly licensed to practice before the courts of
22 the State of California and have been admitted to the United States District Court,
23 Central District of California. I am counsel with the law firm, Klinedinst PC,
24 which is specially appearing on behalf of John Steele, Paul Hansmeier, Paul Duffy,
25 and Angela Van Den Hemel.

26 2. I have personal knowledge of the following facts and, if called upon
27 as a witness, could competently testify thereto.

28 ///

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1 3. I understand that, on March 8, 2013, my office contacted the United
2 States District Court, Central District of California, and was told that the court
3 considers ex parte applications on the papers and does not usually set these matters
4 for hearing. If a hearing is necessary, the parties will be notified.

5 4. On March 8, 2013, I contacted Andrew J. Waxler via telephone. I
6 understand that Waxler will be specially appearing for Brett Gibbs regarding the
7 order to show cause hearing scheduled for March 11, 2013. I advised Waxler of the
8 nature and reasoning of this ex parte application. Waxler told me that he was
9 taking no position on the application.

10 5. On March 8, 2013, I contacted Morgan E. Petz via telephone. I
11 understand that Petze represents Defendant John Doe in this action. I advised Petze
12 of the nature and reasoning of this ex parte application. Petze told me that he
13 anticipated opposing the application, but did not state the grounds upon which he
14 intended to do so.

15 I declare under penalty of perjury under the laws of the State of California
16 and the United States of America that the foregoing is true and correct.

17 Executed the 8th day of March 2013 at San Diego, California.

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David M. Maichrzak

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

INGENUITY 13 LLC,
Plaintiff,
v.
JOHN DOE,
Defendant.

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

**[PROPOSED] ORDER TO
WITHDRAW ORDER FOR JOHN
STEELE, PAUL HANSMEIER, PAUL
DUFFY, AND ANGELA VAN DEN
HEMEL TO APPEAR**

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

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

The following is the final order of the court following consideration of the ex parte application of John Steele, Paul Hansmeier, Paul Duffy, and Angela Van Den Hemel:

Counsel for John Steele, Paul Hansmeier, Paul Duffy, and Angela Van Den Hemel specially appeared to apply ex parte for an order withdrawing this court's order that Steele, Hansmeier, Duffy, and Van Den Hemel appear on March 11, 2013 at 1:30 P.M. After full consideration of the application and argument by the parties, and consideration of all the papers and evidence before the court, the court rules as follows:

///

1 John Steele, Paul Hansmeier, Paul Duffy, and Angela Van Den Hemel's ex
2 parte application is GRANTED.

3 The order for John Steele, Paul Hansmeier, Paul Duffy, and Angela Van Den
4 Hemel to appear before this court on March 11, 2013 at 1:30 P.M. is hereby
5 withdrawn.

6 _____
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10 IT IS SO ORDERED.

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DATED:

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Judge of the United States District
Court, Central District of California

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8 dmajchrzak@klinedinstlaw.com

9 Specially Appearing for JOHN
10 STEELE; PAUL HANSMEIER; PAUL
11 DUFFY; and ANGELA VAN DEN
12 HEMEL

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

15 INGENUITY 13 LLC,
16 Plaintiff,
17 v.
18 JOHN DOE,
19 Defendant.

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

CERTIFICATE OF SERVICE

Date
Time:
Courtroom:
Judge: Hon. Otis D. Wright, II
Magistrate Judge: Hon. Jacqueline Chooljian
Complaint Filed: September 27, 2012
Trial Date: None set

20 I declare that:

21 I am and was at the time of service of the papers herein, over the age of
22 eighteen (18) years and am not a party to the action. I am employed in the County
23 of San Diego, California, and my business address is 501 West Broadway, Suite
24 600, San Diego, California 92101.

25 On **March 8, 2013**, I caused to be served the following documents:

26 **NOTICE OF EX PARTE APPLICATION FOR ORDER**
27 **WITHDRAWING ORDER FOR JOHN STEELE, PAUL**
28 **HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN**
HEMEL TO APPEAR;

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE APPLICATION FOR ORDER
WITHDRAWING ORDER FOR JOHN STEELE, PAUL
HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN
HEMEL TO APPEAR;

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DECLARATION OF DAVID M. MAJCHRZAK IN SUPPORT OF EX PARTE APPLICATION FOR ORDER WITHDRAWING ORDER FOR JOHN STEELE, PAUL HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN HEMEL TO APPEAR;

DECLARATION OF JOHN STEELE IN SUPPORT OF EX PARTE APPLICATION FOR ORDER WITHDRAWING ORDER FOR JOHN STEELE, PAUL HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN HEMEL TO APPEAR;

[PROPOSED] ORDER TO WITHDRAW ORDER FOR JOHN STEELE, PAUL HANSMEIER, PAUL DUFFY, AND ANGELA VAN DEN HEMEL TO APPEAR

NOTICE OF MANUAL FILING

- BY REGULAR MAIL:** I caused such envelopes to be deposited in the United States mail, at San Diego, California, with postage thereon fully prepaid, individually, addressed to the parties as indicated. I am readily familiar with the firm's practice of collection and processing correspondence in mailing. It is deposited with the United States postal service each day and that practice was followed in the ordinary course of business for the service herein attested to. (Fed. R. Civ. P. 5(b)(2)(B).)
- BY OVERNIGHT SERVICE:** I caused such envelopes to be delivered by Overnight/Express Mail Delivery to the addressee(s) noted in this Certificate of Service.
- BY FACSIMILE TRANSMISSION:** I caused a true copy of the foregoing document(s) to be transmitted (by facsimile #) to each of the parties mentioned above at the facsimile machine and as last given by that person on any document which he or she has filed in this action and served upon this office.
- BY ELECTRONIC FILING SERVICE:** By electronically filing the foregoing document(s) using the CM/ECF system. Service of an electronically filed document upon a CM/ECF User who has consented to electronic service is deemed complete upon the transmission of the Notice of Electronic Filing ("NEF") . The NEF will be maintained with the original document(s) in our office.
- BY PERSONAL SERVICE:** I served the person(s) listed below by leaving the documents, in an envelop or package clearly labeled to identify the person being served, to be personally served via Cal Express Attorney Service on the parties listed on the service list below at their designated business address.
 - By personally delivering the copies;
 - By leaving the copies at the attorney's office;
 - With a receptionist, or with a person having charge thereof; or

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In a conspicuous place in the office between the hours of _____ in the morning and five in the afternoon;

By leaving the copies at the individual's residence, a conspicuous place, between the hours of eight in the morning, and six in the afternoon.

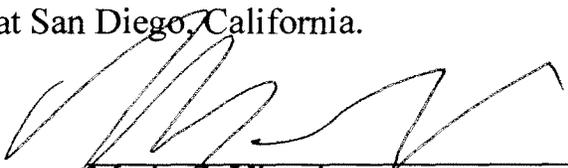
I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

Brett Langdon Gibbs, Esq. PRENDA LAW INC. 38 Miller Avenue Suite 263 Mill Valley, CA 94941 (SERVED VIA EMAIL ONLY)	415-325-5900 blgibbs@wefightpiracy.com Attorney for PLAINTIFF
Morgan E. Pietz, Esq. THE PIETZ LAW FIRM 3770 Highland Avenue, Suite 206 Manhattan Beach, CA 90266	310-424-5557/Fax 310-546-5301 mpietz@pietzlawfirm.com Attorney for Defendant JOHN DOE
Andrew J. Waxler, Esq. Won M. Park, Esq. WAXLER CARNER BRODSKY LLP 1960 East Grand Ave., Suite 1210 El Segundo, CA 90245	310-416-1300/Fax 310-416-1310 awaxler@wcb-law.com wpark@wcb-law.com Attorneys for Specially Appearing Respondent, BRETT L. GIBBS

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 8, 2013, at San Diego, California.



Maria C. Vizcaino

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