

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

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

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

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501 WEST BROADWAY, SUITE 600
SAN DIEGO, CALIFORNIA 92101

15 INGENUITY 13 LLC,

16 Plaintiff,

17 v.

18 JOHN DOE,

19 Defendant.

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

**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**

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

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

20 I.

INTRODUCTION

21 On March 5, 2013, this court issued an order that eight individuals would
22 have to appear before this court on March 11, 2013. But this court lacks
23 jurisdiction to order those individuals to appear in that they reside outside
24 California, are not parties to this litigation, have not appeared in this action, and do
25 not represent parties to this action.
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1 Moreover, although some of these individuals may have received notice as
2 the court ordered, others did not because those charged with providing notice
3 simply lacked the information necessary to do so. And, even those that were served
4 have not received reasonable notice of the nature of the proceedings they are being
5 ordered to appear in or what is expected of them besides their physical presence.

6 Further, they have not received a reasonable amount of notice to
7 accommodate cross-country travel or information regarding who will pay for such
8 travel. Based on these factors, the court should withdraw its order for John Steele,
9 Paul Hansmeier, Paul Duffy, and Angela Van Den Hemel to appear on Monday,
10 March 11, 2013 at 1:30 P.M.

11 II.

12 **THE COURT LACKS PERSONAL JURISDICTION OVER THOSE IT HAS**
13 **ORDERED TO APPEAR**

14 Even where the court seeks to adjudicate issues between parties, it must have
15 personal jurisdiction over them. Here, Steele, Hansmeier, Duffy, and Van Den
16 Hemel are not parties and have not otherwise participated in this litigation. As
17 such, the public policy behind the need to determine personal jurisdiction is
18 arguably at an elevated level because, as individuals, they effectively have “no dog
19 in this fight.”

20 Ordinarily, federal courts do not have nationwide personal jurisdiction. With
21 few exceptions, they have no broader power over persons outside the state in
22 which they sit than do the local state courts. *Omni Capital Int’l, Ltd. v. Rudolph*
23 *Wolff & Co., Ltd.* (1987) 484 U.S. 97, 104-105.

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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.

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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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KLINEDINST PC
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