

No. 13-55859 (Lead Appeal)

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

INGENUITY 13 LLC

Plaintiff-Appellant

and

PAUL HANSMEIER, Esquire, *et al.*,

Movants-Appellants,

v.

JOHN DOE,

Defendant-Appellee,

Consolidated With Appeal Nos.:
13-55880; 13-55881; 13-55882;
13-55883; 13-55884; 13-56028

Related Appeal No.:
13-80114

JOHN DOE’S MOTION FOR JUDICIAL NOTICE

Appeals From Order Awarding Sanctions And Order Setting Bond By
The United States District Court For The Central District Of California
Honorable Otis D. Wright, II, Case No. 2:12-cv-8333-ODW-JCx

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Attorneys for Defendant-Appellee JOHN DOE

MOTION FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, appellee-defendant John Doe hereby requests that the Court take judicial notice of the following in support of the accompanying answering brief on the merits:

Exhibit 1 - Email exchange dated October 20, 2013, between counsel for appellee and counsel for appellant regarding evidence submitted to the district court pursuant to Gibbs' Motion for Indicative Ruling and regarding inclusion of relevant facts in opening brief.

Under Federal Rule of Evidence 201(d), judicial notice may be taken at any stage of the proceeding, including by an appellate court during the pendency of an appeal. Fed. R. Evid. 201(d); *see also Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003); *Bryant v. Carleson*, 444 F.2d 353, 357-58 (9th Cir. 1971); Circuit Advisory Committee Note Seven to Ninth Circuit Rule 27-1. The Court may take judicial notice of any matter "not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

Appellee seeks to have the court take notice of the email exchange in support of two legal propositions.

The first is that the incriminating financial records submitted by Brett Gibbs to the district court, well after the notice of appeal had been filed, in support of his

motion for an indicative ruling, is properly a part of the record on appeal, and that appellants have waived any objections or arguments about that evidence by refusing to address it in their opening brief.

The second is that appellants' counsel was *specifically* warned about making arguments on appeal to the effect of "there is no evidence in the record of X". Notwithstanding this warning, but entirely consistent with the pattern of bad faith litigation laid out in the answering brief, appellants then made exactly such an argument in the opening brief when they stated, repeatedly, "the record on appeal is devoid of any information from which the District Court could reasonably infer that the individual Appellants were real parties in interest." Opening Br., p. 26. As shown in further detail in the accompanying brief, that statement is unquestionably false; there is ample evidence in the record on that point.

Appellee does not seek to have the court take notice of the truth of any of the matters asserted in this email exchange. Rather, it is sought to be relied upon solely to the extent that it shows that appellants' counsel was warned on these two issues, and that there can be not mistake that appellant sanctioned parties have waived certain related arguments.

The fact that appellants were specifically warned on these two issues "can be accurately and readily determined" from the email itself. Further, the email "is a source whose accuracy cannot reasonably be questioned," at least to the limited

extent that it shows that appellee's counsel wrote certain words, to which appellants counsel responded.

Accordingly, appellee John Doe respectfully requests that the court take notice of the fact that appellants' counsel was warned on the two issues noted above, as ascertained from the email attached hereto as Exhibit 1.

Respectfully submitted,

DATED: January 17, 2014

THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

Morgan E. Pietz

*Attorney for Defendant-Appellee,
John Doe*

Lead Appeal No. 13-55859

Consolidated Case Nos.:
13-55880; 13-55881; 13-55882; 13-55883; 13-55884; 13-56028

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing John Doe's Motion For Judicial Notice with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on

January 17, 2014

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Morgan E. Pietz

Morgan E. Pietz
Attorney for Defendant-Appellee,
John Doe

EXHIBIT 1



Morgan Pietz <morganpietz@gmail.com>

Ingenuity 13 Appeal to Ninth Circuit

Daniel J Voelker <daniel.voelker59@gmail.com>
To: "Morgan E. Pietz" <mpietz@pietzlawfirm.com>
Cc: Nicholas Ranallo <nick@ranallolawoffice.com>

Sun, Oct 20, 2013 at 7:50 PM

Morgan:

Thanks for your email. My name is Dan, not David, and to you Mr. Voelker. Please keep in mind that I will not be intimidated, especially by you. I have been litigating cases for almost 28 years.

If I even mildly feel like you are trying to intimidate me or my firm, I will report you to the Courts (every one of them) that you appear before, the Courts where you are licensed to practice as well as to the United States Attorneys in the appropriate jurisdictions, Play by the rules.

Have a good day and do not ever contact me again unless you have the legal right to do so.

Dan

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On Oct 20, 2013, at 7:51 PM, "Morgan E. Pietz" <mpietz@pietzlawfirm.com> wrote:

David,

In view of your recent appearance on the appellate docket, I write to introduce myself. I represent the John Doe defendant in *Ingenuity 13 v John Doe*, 12-cv-8333, which, as you know, is presently on appeal from C.D. Cal. to the Ninth Circuit.

In case you didn't get word from your clients or from the media coverage, I want to make sure you saw Brett Gibbs' filing in the district court last week, since I don't believe you are on the docket there. As a courtesy, please find attached a copy of Mr. Gibbs' recent papers (minus Exhibit G, which is a large photo file that I will try to send that separately, but it may be too big for email).

Don't take this next comment the wrong way, as I truly do offer it in the spirit of professional courtesy: If you are contemplating signing your name to any arguments in the appellate brief, which your clients may be urging on you, to the effect of 'there is no evidence in the record of X,' I would encourage you to be careful

about that. If I was you, I would make sure to look at all of the many exhibits below (not just the ones from the hearing) before I sign something like that. And if you would like to discuss any of those issues, or any other aspect of the case before you file your brief, please feel free to give me a call.

Best regards,
Morgan

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<240 - Main.pdf>

<240-1 - Memo of Ps and As.pdf>

<240-2 - Decl. of Brett Gibbs.pdf>

<240-3 - Exhibit A - Proposed Release Agreement.pdf>

<240-4 - Exhibit B - Proposed Indemnity Agreement.pdf>

<240-5 - Exhibit C - Warning Letter from Paul Duffy.pdf>

<240-6 - Exhibit D - Emails from John Steele Re Prenda Insurance Policy.pdf>

<240-7 - Exhibit E - Prenda Law Profit and Loss Detail 2012.pdf>

<240-8 - Exhibit F - Prenda OP Balance Sheet Detail Version 2012.pdf>

<240-10 - Proposed Order.pdf>