FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against PAUL ROBERT HANSMEIER, a Minnesota Attorney, Registration No. 0387795.

NOTICE

TO: The Above-Named Respondent Attorney:

YOU ARE HEREBY NOTIFIED, pursuant to Rule 13, Rules on Lawyers Professional Responsibility, that you must file your answer to the attached petition for disciplinary action within twenty (20) days of its service upon you. The answer, with proof of service, must be filed with the Clerk of Appellate Courts. The answer must also be served, by mail or in person, upon the Director of the Office of Lawyers Professional Responsibility. Failure to file and serve the answer as required shall cause the allegations in the petition for disciplinary action to be deemed admitted.

Dated: October 26, 2015.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

By _____

PATRICK R. BURNS
FIRST ASSISTANT DIRECTOR
Attorney No. 0134004

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against PAUL ROBERT HANSMEIER, a Minnesota Attorney, Registration No. 0387795.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 26, 2007. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

INTRODUCTION

1. Respondent, together with Illinois attorneys John Steele and Paul Duffy, purportedly on behalf of various entities that hold the copyrights to various adult films, instituted hundreds of litigations in state and federal courts throughout the country alleging either copyright infringements via improper downloading of the films over the Internet or wrongful interception or hacking of usernames and passwords to gain access to the purported clients' websites.

2. Respondent, Steele, and Duffy, at the times relevant to this proceeding, brought the suits through various law firms in which they had an interest. These firms

included Steele Hansmeier, LLC; Prenda Law, Inc. (Prenda); and Alpha Law Firm, LLC (Alpha).

3. The "clients" represented by respondent, Steele, and Duffy in the various litigations included AF Holdings, Inc.; Hard Drive Productions, Inc.; Guava, LLC; Lightspeed Media Corporation; Ingenuity 13; Boy Racer, Inc.; and others.

4. Typically, at the outset of the suit, there would be no individuals identified as the defendants, but rather the defendants would be identified as various John Does. Individual defendants were not initially named because the only information respondent had with respect to the alleged copyright infringer or hacker was an Internet Protocol (IP) address for the computer that accessed or downloaded the film in question.

5. Few, if any, of these suits were ever actually tried. Instead, respondent, Steele, and Duffy—often utilizing local contract counsel—after filing a suit naming only unidentified "John Does" as defendants, would immediately bring discovery motions seeking permission to subpoena various Internet Service Providers (ISPs) to determine the identities of the owners of the IP addresses that had accessed the adult films, allegedly in violation of the copyright laws. Once those identities were disclosed by the ISPs, demand letters were sent to the Internet subscribers telling them that "forensic experts" had detected illegal downloading of the adult film to the subscribers' computers, noting the possibility of damages of "up to $150,000" or more, and threatening to bring suit against the subscribers unless they agreed to a settlement, typically in the range of $2,000-$4,000.

6. For instance, in the matter of *AF Holdings v. Does 1-135*, Case No. 11-cv-03336 in the United States District Court for the Northern District of California, the custodian of records for Prenda identified 118 suits against alleged copyright infringers involving over 15,000 Doe defendants and disclosed that none of the defendants in any of the suits had actually been served with a summons and complaint.

7. Illustrative of respondent's practice in this regard are the findings of the court in the matter of *Ingenuity 13, LLC v. John Doe*, Case No. 12-cv-8333, United States District Court, Central District of California. In a sanctions order filed May 6, 2013, the court found:

> Plaintiffs [footnote omitted] have outmaneuvered the legal system [footnote omitted]. They've discovered the nexus of antiquated copyright laws, paralyzing social stigma, and unaffordable defense costs. And they exploit this anomaly by accusing individuals of illegally downloading a single pornographic video. Then they offer to settle—for a sum calculated to be just below the cost of a bare-bones defense. For these individuals, resistance is futile; most reluctantly pay rather than have their names associated with illegally downloading porn. So now, copyright laws originally designed to compensate starving artists allow, starving attorneys in this electronic-media era to plunder the citizenry.
>
> * * *
>
> The Principals [respondent, Steele, and Duffy] started their copyright-enforcement crusade in about 2010, through Prenda Law, which was also owned and controlled by the Principals. Their litigation strategy consisted of monitoring BitTorrent download activity of their copyrighted pornographic movies, recording IP addresses of the computers downloading the movies, filing suit in federal court to subpoena Internet Service Providers ("ISPs") for the identity of the subscribers to these IP addresses, and sending cease-and-desist letters to the subscribers, offering to settle each copyright infringement claim for about $4,000.
>
> This nationwide strategy was highly successful because of statutory copyright damages, the pornographic subject matter, and the high cost of litigation. Most defendants settled with the Principals, resulting in proceeds of millions of dollars due to the numerosity of defendants. These settlement funds resided in the Principals' accounts and not in accounts belonging to AF Holdings or Ingenuity 13. No taxes have been paid on this income.
>
> For defendants that refused to settle, the Principals engaged in vexatious litigation designed to coerce settlement. These lawsuits were filed using

> boilerplate complaints based on a modicum of evidence, calculated to maximize settlement profits by minimizing costs and effort.
>
> The Principals have shown little desire to proceed in these lawsuits when faced with a determined defendant. Instead of litigating, they dismiss the case. When pressed for discovery, the Principals offer only disinformation—even to the Court.
>
> * * *
>
> The Principals maintained full control over the entire copyright-litigation operation. The Principals dictated the strategy to employ in each case, ordered their hired lawyers and witnesses to provide disinformation about the cases and the nature of their operation, and possessed all financial interests in the outcome of each case.

Also of note is the opinion of the United States Court of Appeals for the District of Columbia Circuit, which stated in a May 27, 2014, opinion in *AF Holdings, LLC v. Does 1-1058*, 752 F.3d 990, 992:

> Prenda Law, as Judge Otis Wright II put it in a case similar to this, was a "porno-trolling collective." *Ingenuity 13 LLC v. John Doe*, No. 2:12–cv-8333, 2013 WL 1898633, at *1, 2013 U.S. Dist. LEXIS 64564, at *3 (C.D.Cal. May 6, 2013). According to Judge Wright, Duffy and the other principals of Prenda Law were "attorneys with shattered law practices" who, "[s]eeking easy money, . . . formed . . . AF Holdings," acquired "several copyrights to pornographic movies," then initiated massive "John Doe" copyright infringement lawsuits. *Id.* at *2, 2013 U.S. Dist. LEXIS 64564, at *5–6. These suits took advantage of judicial discovery procedures in order to identify persons who might possibly have downloaded certain pornographic films. Such individuals, although generally able to use the Internet anonymously, are, like all Internet users, linked to particular Internet Protocol (IP) addresses, a series of numbers assigned to each Internet service subscriber. Internet service providers like Appellants can use IP addresses to identify these underlying subscribers, but not necessarily the individuals actually accessing the Internet through the subscribers' connections at any given time. Confronted with these realities, Prenda Law's general approach was to identify certain unknown persons whose IP addresses were used to download pornographic films, sue them in gigantic multi-defendant suits that minimized filing fees,

discover the identities of the persons to whom these IP address were assigned by serving subpoenas on the Internet service providers to which the addresses pertained, then negotiate settlements with the underlying subscribers—a "strategy [that] was highly successful because of statutory-copyright damages, the pornographic subject matter, and the high cost of litigation." *Id.* at *2, 2013 U.S. Dist. LEXIS 64564, at *6–7; *see also* Claire Suddath, *Prenda Law, the Porn Copyright Trolls*, Bloomberg Businessweek (May 30, 2013), http://www.businessweek.com/articles/2013-05-30/prenda-law-the-porn-copyright-trolls (recounting Prenda Law's history and litigation tactics). If an identified defendant sought to actually litigate, Prenda Law would simply dismiss the case. *See Ingenuity 13 LLC*, 2013 WL 1898633, at *2,2013 U.S. Dist. LEXIS 64564, at *6–7. As Duffy acknowledged at oral argument, of the more than one hundred cases that AF Holdings has initiated, none has proceeded to trial or resulted in any judgment in its favor other than by default. Oral Arg. Rec. 30:09–20. Nevertheless, according to one article, Prenda Law made around $15 million in a little less than three years. *See* Kashmir Hill, *How Porn Copyright Lawyer John Steel Has Made a 'Few Million Dollars' Pursuing (Sometimes Innocent) 'Porn Pirates'*, Forbes (Oct. 15, 2012), http://www.forbes. com/sites/kashmirhill/2012/10/15/how-porn-copyright-lawyerjohn-steele-justifies-his-pursuit-of-sometimes-innocent-porn-pirates.

8. In the course of engaging in the pattern of activity set forth above, respondent committed the misconduct more fully set forth below.

FIRST COUNT

Guava v. Merkel Matter

9. On October 17, 2012, Guava, LLC (Guava) filed a summons and complaint in an action against Spencer Merkel in Hennepin County District Court. The summons and complaint was signed by attorney Michael Dugas who signed on behalf of Alpha. Alpha is a professional firm incorporated by respondent. At all times relevant to this petition, respondent was the sole lawyer with an ownership interest in Alpha.

10. The affidavit of service of the October 17, 2012, summons and complaint executed by Dugas stated that service of the summons and complaint was

accomplished by handing a true and correct copy of the documents to Merkel's attorney, Trina Morrison.

11. The October 17, 2012, complaint filed on behalf of Guava, alleged that Spencer Merkel had used a username and password that did not belong to him to gain unauthorized access to Guava's computer systems and intercepted electronic communications between Guava and its members. The complaint further alleged that Merkel conspired with others in order to gain access to Guava's computer systems. The complaint sought money damages from Merkel together with "declaratory and injunctive or other equitable relief as may be just and warranted."

12. On October 25, 2012, Guava filed a discovery motion seeking an "Authorizing Order granting limited discovery to identify Spencer Merkel's co-conspirators." Guava, prior to bringing this motion, had not yet sought any discovery at all from Merkel.

13. On October 31, 2012, respondent and Dugas appeared on behalf of Guava at the hearing on the discovery motion. At that hearing, they sought authority for issuance of subpoenas to over 300 ISPs for the alleged purpose of determining the identities of the ISP customers who had conspired with Merkel to gain unauthorized access to Guava's computer systems.

14. On November 2, 2012, the court issued an order denying the discovery motion, finding that, "Plaintiff has not demonstrated that the personally identifying information possessed by over 300 Internet Service Providers listed in Exhibit A is relevant and material to the matter. Plaintiff's request for access to over 300 Internet Service Provider is broad and excessive."

15. On November 6, 2012, Dugas brought a renewed motion for discovery on behalf of Guava. That motion was signed by Dugas on behalf of Alpha. The motion sought authorization from the court to issue subpoenas to 17 specifically-named ISPs. Guava, prior to bringing this motion, had not yet sought any discovery at all from

Merkel and, by this time, Merkel had submitted an answer denying Guava's allegations of a conspiracy.

16. On November 7, 2012, the court issued an order authorizing the subpoenas sought on the condition that the recipients of any subpoenas would be permitted the opportunity to move to quash the subpoenas.

17. In December 2012, over 30 non-parties, including four ISPs and more than 20 ISP customers, filed motions to quash the subpoenas.

18. On January 25, 2013, the court heard the motions of the ISPs and ISP customers. Respondent, Dugas, and Illinois attorney John Steele appeared at that hearing on behalf of Guava.

19. At the January 25 hearing, it came out that Merkel was a resident of Beaverton, Oregon, and had no connection to Minnesota.

20. Merkel submitted an affidavit to the court stating that he had received a September 26, 2012, letter from Prenda, a law firm with which respondent was associated, regarding *Hard Drive Productions, Inc. v. John Does 1-1,495.* That letter stated that Merkel's computer had been identified as having illegally distributed a pornographic movie, *Amateur Allure – MaeLynn.* The letter offered Merkel an opportunity to settle Hard Drive's copyright infringement claim against Merkel for $3,400. Merkel contacted Prenda and spoke with "Michael." Michael offered Merkel a settlement deal that required Merkel to agree to be sued; that in that suit Prenda would ask for, and Merkel would provide, the bit-torrent log from his computer; and, upon receipt of the bit-torrent log, Prenda would dismiss Hard Drive's claim against him. Michael also agreed to find a *pro bono* lawyer in Minnesota to represent Merkel in the litigation.

21. Attorney Trina Morrison testified at the January 25, 2013, hearing. Morrison had become involved in the *Guava v. Merkel* matter as follows:

a. On October 3, 2012, Dugas, a former law school classmate of Morrison, sent Morrison an email stating:

> My employer (Paul Hansmeier) was discussing potential candidates for a particular project he had in mind with Nadia Wood and your name came up. The gist of the project is:
>
> (1) You would represent an individual pro bono adverse to our firm (we want the individual to be represented by an attorney so his rights are defended). We would obviously have no input in how you represent this individual.
>
> (2) We would provide you with an opportunity to represent one of our clients (or potential clients) unrelated to your first representation and get paid for that work.
>
> (3) You would be able to continue with document review.
>
> If you'd like to discuss this in further detail let me know and we can set up a lunch between you, me, and Paul.
>
> Looking forward to hearing from you.

b. In response to that email, Morrison met with respondent and Dugas on October 4, 2012.

c. At the October 4 meeting, respondent and Dugas told Morrison that they deal with copyright cases and often have defendants who are without counsel. They told her that they preferred dealing with represented persons rather than *pro se* parties. Respondent told Morrison that when she would get a referral of a defendant from them, the defendant would have already called them and they would have worked out an agreement whereby the defendant agreed to be sued so that they could obtain the defendant's bit-torrent log in order to determine who the co-conspirators were. Once that was obtained, they would drop the case against that particular defendant.

d. On October 5, 2012, respondent called Morrison regarding Merkel. He told her that Merkel lived in Oregon but had agreed to be sued in Minnesota. Morrison subsequently spoke with Merkel who confirmed the agreement he had reached as set forth in the affidavit referred to in paragraph 20 above.

e. After speaking with Merkel, Morrison had further questions that she directed to respondent. She asked him what, exactly, would be needed from Merkel. Respondent told her that they would sue Merkel and then bring an emergency motion seeking discovery. Once they got the information they sought in discovery, they would drop the case against Merkel.

f. On October 10, 2012, respondent sent Morrison an email stating:

> Trina:
>
> I received your voice mail. It sounds like we're moving forward. As requested, here is my client's proposal for moving forward. The first step in the process will be for our client to initiate the action by serving your client with a complaint. Typically we accomplish this step by mailing the attorney a copy of the complaint. We can also hand deliver it to you at a convenient time when you are downtown. We are finishing up the complaint and should have something ready to serve tomorrow. Our client's next step will be to file a motion for an authorizing order, which will give cable operators statutory authorization to disclose the identities of their subscribers. If the motion is granted, we will issue subpoenas to Internet Service Providers and defend against motions to quash. If discovery of Mr. Merkel's computer log is necessary, we will negotiate a protective order with you and secure the log file that we discussed.
>
> Your client will obviously be taking actions in the midst of our activity and we will be glad to accommodate any reasonable requests. As we both know, neither of our clients benefits from needlessly protracted litigation.
>
> Please let me know your thoughts.

22. At the January 25 hearing, respondent falsely stated that there was no agreement with Merkel to settle the claims against him, stating:

> I think it's very natural for a Defendant to want to say that this case is settled and there's no reason for it to continue. But again, if there's an agreement that he's going to be exonerated from liability, I would expect to see something in writing. I don't think I would – well our client is [sic] not agreed to settle the matter I guess is the bottom line.

23. At the January 25 hearing, the court questioned whether it had jurisdiction over the matter in light of the lack of contacts Merkel and Guava had with the State of Minnesota and stated an intent to dismiss the case because Guava had not filed a certificate of authority pursuant to Minn. Stat. § 322B.94. In response, respondent asked for additional time to permit the filing of the certificate. Respondent never filed a certificate of authority on behalf of Guava.

24. On February 5, 2013, respondent transferred $65,970 from Alpha to Class Action Justice Institute, LLC, of which respondent is the sole member.

25. Before the court could rule on the motions to quash, Guava and Merkel executed and filed a stipulation of dismissal with prejudice and the matter was dismissed on March 5, 2013.

26. On March 1, 2013, attorney Edward Sheu, on behalf of one of the ISP customers who had brought a motion to quash the subpoenas issued by Guava, brought a motion for an award of attorney's fees and costs to be paid by Guava and its counsel of record.

27. On March 1, 2013, the court issued an order to show cause directing Guava and Dugas to appear on April 23, 2013, and show cause why they should not be ordered to pay the reasonable attorneys' fees and costs incurred by all of the non-parties to the action who were required to retain legal counsel and incur expenses in presenting the motions to quash subpoenas that were heard on January 25, 2013. That order to

show cause with Sheu's accompanying motion documents was served on Dugas on March 4, 2013, at 900 IDS Center, the office address for Alpha and respondent.

28. On March 7, 2013, the court issued an amended order to show cause directing Guava and Dugas to appear on April 23, 2013, and show cause why they should not be ordered to pay the reasonable attorneys' fees and costs incurred by all of the non-parties to the action who were required to retain legal counsel and incur expenses in presenting the motions to quash subpoenas that were heard on January 25, 2013. That amended order to show cause with Sheu's accompanying motion documents was served on Dugas on March 8, 2013, at 900 IDS Center, the office address for Alpha and respondent.

29. On March 13, 2013, respondent transferred $80,000 from Alpha's bank account to his personal account.

30. At the April 23 hearing, no corporate representative of Guava appeared, although Dugas stated that he was appearing as attorney for Guava.

31. On August 7, 2013, the court filed an order granting the non-parties' request for fees and expenses and ordered Alpha, Dugas, and Guava to pay $63,367.52 in attorneys' fees to the various non-parties. That order specifically provided that respondent, among others, was not liable to any of the non-parties for fees or costs.

32. On August 30, 2013, the court filed a Memorandum explaining its rationale for the award of fees. In that Memorandum, the court specifically found:

> Based upon the record, this Court concludes that Plaintiff Guava LLC and its counsel Michael K. Dugas of Alpha Law Firm LLC acted in bad faith and without a basis in law and fact to initiate this action in Minnesota State District Court.

The court further found that the requests for authorization to subpoena non-party ISPs was a "fishing expedition" and an attempt to harass and burden the non-parties

through obtaining IP addresses to pursue possible settlement rather than proceed with potentially embarrassing litigation regarding downloading pornographic movies.

33. Also on August 30, 2013, respondent filed with the Minnesota Secretary of State's Office Articles of Termination dated August 23 with respect to Alpha. In those Articles respondent falsely stated and certified as true and correct that "all known debts, obligations and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge," and:

> There are no pending legal, administrative or arbitration proceedings by or against the limited liability company, or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in a pending proceeding.

Respondent certified these statements as true and correct and acknowledged that they were made under penalties of perjury. These statements were false because respondent was aware of the proceedings in *Guava v. Merkel* seeking an assessment of attorneys' fees against Alpha and neither respondent nor Alpha had paid or made provision for payment of the attorneys' fees award reflected in the August 7, 2013, order.

34. On September 23, 2013, judgment was entered against Dugas, Guava, and Alpha in the total amount of $63,367.52 in favor of five law firms that had represented non-party ISPs who had sought to quash the subpoenas.

35. On October 30, 2013, Dugas, Guava, and Alpha filed a notice of appeal to the Court of Appeals appealing the September 23, 2013, judgment.

36. On November 21, 2013, the district court entered an order denying Alpha's and Dugas' motion to stay enforcement of the judgment pending appeal and ordered Alpha and Dugas to respond to post-judgment discovery by November 27, 2013.

37. Alpha failed to respond to the post-judgment discovery by November 27, 2013.

38. On January 8, 2014, Sheu, on behalf of his client, brought a motion in the district court seeking, among other things, an order determining that respondent be held responsible for Alpha's judgment in the matter based on the dissolution of Alpha on August 23, 2013, and his distribution and dissipation of Alpha's assets.

39. On January 22, 2014, the court conducted a hearing on Sheu's motion.

40. On May 27, 2014, the court entered an order denying the request to add respondent as a judgment debtor but granting the request for discovery sanctions against Alpha. In its memorandum accompanying the May 27 order, the court noted that it lacked jurisdiction to add respondent as a judgment debtor because the matter was then pending before the Court of Appeals. The court also noted that Alpha, through respondent, had failed to comply with discovery as ordered by the court on November 21, 2013. In its order, the court ordered Alpha to pay $3,300 in attorney's fees as a sanction for failure to comply with discovery.

41. On June 30, 2014, respondent testified under oath at a judgment debtor's examination before the district court. When asked about a May 3, 2011, $75,000 check from Alpha Law Firm to Monyet, LLC, respondent testified as follows:

Q. Do you know what Monyet, LLC, is?

A. It's presumably a limited liability company.

Q. I see you're the signatory to the check and you're also the signatory on the back of the check. You don't know what Monyet, LLC is?

A. To the best of my recollection the Monyet, LLC entity is simply an account associated with estate planning but I don't know - - the reason, I can't tell you how it operates within the whole estate planning scheme is because I did not set up the estate planning myself that's something that's well beyond my expertize.

* * *

A. I mean yeah and that's my testimony that Monyet distributions were made for estate planning purposes not for Alpha Law Firm.

Q. Whose estate planning then?

A. It's just setting up a trust for well now my son I guess he would be the beneficiary of it.

42. On July 2, 2014, respondent again testified under oath at a judgment debtor's examination regarding Monyet, LLC, as follows:

Q. And it's [Monyet, LLC] a limited liability company organized in the State of Delaware, is that correct?

A. I don't know where it's organized. I don't know if that's correct or incorrect.

Q. Well who set up Monyet, LLC?

A. An attorney.

Q. On whose behalf?

A. It - - I'm not aware of the circumstances of on whose behalf it was.

Q. Was it at your direction?

A. I'm trying to be precise here because I've botched this once before. The way I would describe it to be most precise and hopefully most accurate, is that it was set up as a part of the trust and estates planning and that's how I describe it.

Q. Trust and estates planning for whom?

A. I guess I would describe it as my family.

Q. And who makes up your family?

* * *

A. Okay. Well my family consists of me, my wife and my baby son.

* * *

Q. Do you know where this money is located?

A. I do not.

Q. Well how would you ever as beneficiary of this money ever get any of it?

A. I don't think I could get any of it.

43. Respondent's testimony that he was unaware of how Monyet, LLC operated; that the funds in Monyet, LLC were transferred as part of a trust for the benefit of his son; that he did not know where Monyet, LLC's money was located; and that he could not get any of the Monyet, LLC money was false and misleading. In fact, respondent was actively involved in the operations of Monyet, LLC and transfers from Monyet, LLC were made for the benefit of respondent and entities controlled by respondent as evidenced by the following:

a. In an undated document entitled, "The Operating Agreement of Monyet LLC," signed by respondent and his wife, respondent was identified as the manager of Monyet, LLC.

b. On December 27, 2010, respondent completed and signed a Brokerage Account Application with Scottrade for an account in the name of Monyet, LLC, identifying himself as the manager of Monyet, LLC.

c. On December 28, 2010, respondent completed and signed a Business Account Application and Agreement with TCF Bank in which he identified the customer as Monyet LLC and himself as the authorized signer for and manager of Monyet, LLC.

d. On June 28, 2013, respondent transferred $10,000 from Monyet to Livewire Holdings, LLC, a company in which he was an investor.

e. From May 2013 through at least May 2014, respondent signed at least 19 authorizations directing Scottrade to make wire transfers from the

Monyet, LLC account to various entities totaling $590,033.50. Those transfers included:

i. a May 15, 2013, transfer of $51,333.50 to account held by SureTec Insurance Company for the purpose of posting an appellate bond in 12-cv-8333 (*Ingenuity 13, LLC v. John Doe* – *see* paragraphs 95-110 below);

ii. a June 27, 2013, transfer of $10,000 to an account held by Livewire Holdings, LLC;

iii. a June 28, 2013, transfer of $10,000 to an account held by Livewire Holdings, LLC;

iv. a July 15, 2013, transfer of $69,000 to an account held by SureTec Insurance Company for an attorney's fees escrow;

v. a July 19, 2013, transfer of $10,000 to an account held by SureTec Insurance Company for an attorney's fees escrow;

vi. a July 26, 2013, transfer of $25,000 to an account held by Class Justice PLLC, an entity in which respondent has an interest;

vii. a July 30, 2013, transfer of $5,000 to Padraigin Browne, respondent's wife;

viii. an August 27, 2013, transfer of $30,000 to Padraigin Browne;

ix. a September 25, 2013, transfer of $10,000 to Voelker Litigation Group for legal services (Voelker Litigation Group represented respondent, Steele, and Duffy in the appeal to the Ninth Circuit Court of Appeals in *Ingenuity 13, LLC v. John Doe.*);

x. an October 1, 2013, transfer of $25,000 to Class Justice, PLLC;

xi. a November 19, 2013, transfer of $10,000 to Voelker Litigation Group;

xii. a November 19, 2013, transfer of $20,000 to Class Justice, PLLC;

xiii. a November 22, 2013, transfer of $175,000 to Padraigin Browne;

xiv. a December 9, 2013, transfer of $21,250 to Robert P. Balzebre;

xv. a January 17, 2014, transfer of $20,000 to Class Justice, PLLC;

xvi a February 7, 2014, transfer of $70,000 to Padraigin Browne;

xvii. a March 19, 2014, transfer of $25,000 to Class Justice, PLLC;

xviii. a March 19, 2014, transfer of $3,750 to Voelker Litigation Group; and

xix. a May 5, 2014, transfer to Chisholm Properties South Beach, Inc., for an attorney's fees escrow.

44. On August 4, 2014, the Court of Appeals issued its decision in *Guava v. Merkel*, 2014 WL 3800492 (Minn. Ct. App. 2014). The Court of Appeals held that the district court did not abuse its discretion in imposing attorney's fees due to the improper use of the judicial system and the bad faith litigation by Guava. The Court of Appeals also held that Alpha had received sufficient notice of the potential for sanctions against it and denied the request to reverse the sanctions award against Alpha.

45. On September 5, 2014, Sheu brought a motion asking the court to, among other things, issue an order amending the judgments against Alpha to include respondent and another firm owned by respondent, Class Justice, PLLC, as co-judgment debtors.

46. On January 20, 2015, the court issued an order adding respondent and Class Justice, PLLC as judgment debtors and finding respondent personally liable for the $63,367.52 judgment, less any payments previously received, jointly and severally with Dugas, Alpha and Guava. In that, order the court stated:

> Hansmeier claimed that he had no notice of the March 5 and March 6, 2013, Orders to Show Cause directed to Alpha, or the August 7, 2013 sanctions award against Alpha, when he first transferred the $80,000 to

himself on March 13, 2013 and when he later dissolved Alpha with the Minnesota Secretary of State on August 25, 2013. [Citation to record omitted]. The Court finds that Hansmeier's initial involvement in this proceeding, as well as his ongoing involvement in these proceedings and the appeal, undercuts his claim that he was unaware of the motion for sanctions or the resulting order for sanctions when he made the transfers from Alpha's account and when he dissolved Alpha. Hansmeier appeared at the January 25, 2013 hearing and argued extensively for Plaintiff, and Hansmeier was Alpha's sole owner. The Court finds it unbelievable that Hansmeier did not have notice of the Court's March 5, 2013 and March 6, 2013 Orders to Show Cause, which were personally served on Alpha's offices, pursuant to court rules of procedure and practice. The Minnesota Court of Appeals also rejected the argument that Alpha had no prior notice of the sanctions hearing [citation omitted].

* * *

Although Hansmeier claimed to lack knowledge when asked about many financial matters, sufficient evidence was presented showing that Hansmeier used Alpha primarily for his personal use and that Hansmeier had transferred funds away from Alpha to avoid paying creditors, including the Judgment Creditor in this action.

* * *

The Court finds that Hansmeier did not operate Alpha as a law firm or a separate legal entity but simply to serve as a conduit of money for his financial benefit and an attempt to deflect liability for sanctions. Hansmeier used Alpha as a liability shield to prosecute this and other actions, as well as a bridge for the transfer of money from other entities to himself. Hansmeier knew of the possibility of sanctions in this action, transferred Alpha's money away, and terminated Alpha to avoid paying the judgments in this action.

* * *

This finding [that Hansmeier was acting as the alter ego of Alpha] is compounded by the other forms of fraud perpetuated on this Court in this case. From the beginning, Dugas, Hansmeier and Alpha initiated this lawsuit in bad faith and a sham in an effort to procure future settlements [footnote omitted]. Further, Dugas and Hansmeier misled this Court to

> such an extent that even the simplest fact as to which attorney was employed by a specific firm was misrepresented . . . . The truth behind all of Hansmeier' s actions may never be revealed because of his bad faith actions and evasive testimony in the face of potential consequences [footnote omitted]. However, the record does support piercing the corporate veil to hold Hansmeier personally liable for any unpaid judgment amount because of his apparent disregard for corporate formalities and admitted use of corporate assets for personal purposes.

That order was reduced to judgment on January 27, 2015.

47. On February 11, 2015, respondent filed a notice of appeal with the clerk of appellate courts appealing the January 27, 2015, judgment against him.

48. While the appeal was pending, Sheu conducted post-judgment discovery seeking financial information from respondent.

49. On March 5, 2015, the court issued a post judgment discovery order which, among other things, directed respondent to respond to all interrogatories and requests for documents no later than March 20, 2015.

50. Respondent did not timely provide responses as ordered by the court in its March 5 order. On March 24, 2015, Sheu received responses from respondent that were postmarked as mailed on March 21, 2015. As noted below, the court later found these responses to be "incomplete and evasive."

51. On March 27, 2015, Sheu brought a motion seeking an order to show cause why respondent should not be held in contempt of the March 5, 2015, order and other relief. That motion was considered by the court at a hearing held on April 10, 2015.

52. On June 29, 2015, the court issued an order finding that "Hansmeier has not been forthcoming with post-judgment discovery and his responses have been incomplete and evasive," and directing respondent to provide to Sheu all of the documents referenced in the March 5 order by 4:30 p.m. on July 7, 2015. That ord[redacted]

court further assessed attorney's fees against respondent in the amount of $3,500 for the attorney's fees and costs incurred in bringing the motion before the court.

53. Respondent did not pay the $3,500 in attorney's fees he was ordered to pay and that obligation was reduced to judgment on July 8, 2015.

54. Respondent did not comply with the June 29, 2015, order directing him to provide documents to Sheu by July 7, 2015.

55. On July 13, 2015, the day before the contempt hearing, respondent filed for bankruptcy in the United States District Court for the District of Minnesota.

56. On August 17, 2015, the Minnesota Court of Appeals issued an opinion affirming the January 20, 2015, order. In its opinion, the Court of Appeals specifically affirmed the trial court's finding that respondent used Alpha as a façade to perpetrate fraud upon the court. The Court further stated:

> The district court concluded that fundamental unfairness would result if it did not pierce the corporate veil because Hansmeier's actions had prevented the judgment creditors from collecting their judgment against Alpha. The court pointed out that "Hansmeier knew of the possibility of sanctions in this action, transferred Alpha's money away, and terminated Alpha to avoid paying the judgments in this action." The record supports those findings, which clearly show that Hansmeier abused the corporate-liability shield to avoid paying sanctions in a bad-faith lawsuit for which he was responsible. Neither the judgment debtors' motion to post funds nor John Doe's opposition to that motion undermines the conclusion that Hansmeier operated Alpha in an unjust manner. The district court did not clearly err by finding that piercing the corporate veil was necessary to avoid fundamental unfairness.

57. Respondent's conduct in the *Guava v. Merkel* matter in colluding with Merkel and Morrison to bring suit in Minnesota for the sole purpose of conducting discovery in order to find the identity of others against whom claims could be made; in falsely stating that there was no agreement with Merkel to drop the suit against him once discovery was obtained from the ISPs; in filing Articles of Termination with

respect to Alpha that contained false statements; in failing to comply with legally proper discovery requests; in making false and misleading statements regarding his involvement with Monyet, LLC; in transferring funds out of Alpha in order to avoid paying the judgments in the action; in initiating the lawsuit against Merkel in bad faith; and in failing to pay attorneys' fees assessed against him by the court, violated Rules 3.1, 3.3(a)(1), 3.4(c) and (d), 4.1, and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Lightspeed Media Corp. v. Smith Matter

58. On December 14, 2011, Lightspeed Media Corporation (Lightspeed) filed suit against John Doe in the Circuit Court of the Twentieth Judicial District in St. Clair County, Illinois. The suit alleged that Lightspeed is the owner and operator of an adult entertainment website and that defendant John Doe and other co-conspirators gained unauthorized access to Lightspeed's private website. The complaint was signed by attorney Michael O'Malley on behalf of Lightspeed. An amended complaint dated August 13, 2012, was filed on behalf of Lightspeed. This complaint was signed by attorney Kevin Hoerner and indicated that Prenda was appearing on behalf of Lightspeed.

59. On December 16, 2011, the circuit court granted Lightspeed's *ex parte* motion for leave to obtain discovery by subpoena from dozens of ISPs of information personally identifying persons who had allegedly gained unauthorized access to Lightspeed's website. Two of the ISPs, AT&T and Comcast, filed motions to quash the subpoenas and/or for a protective order.

60. On April 12, 2012, and again on May 21, 2012, the Illinois Circuit Court denied the motions to quash Lightspeed's subpoenas.

61. On June 27, 2012, the Illinois Supreme Court issued a supervisory order directing that the Circuit Court vacate its orders denying the motions to quash Lightspeed's subpoenas and enter an order allowing the motion to quash.

62. On August 3, 2012, Lightspeed filed an amended complaint. The amended complaint substituted Anthony Smith, AT&T, and Comcast as the named defendants. The complaint alleged that Smith gained unauthorized access to Lightspeed's website and that AT&T and Comcast engaged in negligence in allowing their subscribers to hack into Lightspeed's website, improperly opposed Lightspeed's discovery, failed to act to protect Lightspeed's websites and conspired with their customers to Lightspeed's detriment.

63. On August 9, 2012, AT&T removed the Illinois state court action to federal court. Thereafter, the matter proceeded under Court File No. 12-cv-00889.

64. On August 16, 2012, Lightspeed brought a motion seeking discovery from AT&T and Comcast. That motion sought an order requiring the ISPs to send a cease and desist letter to their subscribers; disclosure of the identity of the subscribers; an order directing preservation of evidence relevant to Lightspeed's case; and disclosure of the identity of the corporate representatives identified as defendants in Lightspeed's lawsuit.

65. Lightspeed's motion sought disclosure of the identities of over 6,000 subscribers of the ISPs.

66. On August 20, 2012, respondent brought a motion to be admitted *pro hac vice* to the United States District Court for the Southern District of Illinois in order to appear as counsel for Lightspeed.

67. On August 20, 2012, a hearing was held on Lightspeed's motion for discovery. Respondent appeared at that hearing on behalf of Lightspeed. Judge Murphy, the presiding judge, denied the motion for discovery.

68. On August 29, 2012, AT&T and Comcast brought motions to dismiss Lightspeed's complaint.

69. On November 14, 2012, respondent moved to withdraw from the case. That motion was granted the next day.

70. On March 21, 2013, prior to the resolution of the ISPs motions to dismiss, Lightspeed entered a notice of voluntary dismissal of their complaint.

71. On April 5, 2013, Smith brought a motion seeking an award of attorney's fees to be assessed against Lightspeed's counsel, including respondent.

72. On October 30, 2013, the court issued an order granting Smith's motion for an award of attorney's fees. In that order, the court found that Lightspeed raised baseless claims despite knowledge those claims were frivolous and pressed for a meritless "emergency" discovery hearing.

73. On October 31, 2013, respondent brought a motion to vacate the award of attorney's fees or, in the alternative, for reconsideration.

74. On November 8, 2013, both Comcast and AT&T brought motions seeking an award of attorney's fees to be assessed against Lightspeed's counsel, including respondent.

75. On November 13, 2013, a hearing was held on the various motions. At that hearing, respondent asserted that he had not received proper notice of the motions seeking to assess attorney's fees against him. At that hearing, respondent made false and misleading statements to the court with respect to his prior associations with Prenda as follows:

> MR. HANSMEIER: And I appeared through Alpha Law Firm, not through Prenda Law, Inc. . . .
>
> * * *
>
> MR. HANSMEIER: The initial matter is notice. And if the Court reviews its docket, it will see that when my appearance was

entered in this case, it was not entered on behalf of Prenda Law, Inc. Instead it was entered on behalf of Alpha Law Firm, LLC.

* * *

THE COURT: Alright. I mean, that's what we have here, is we have concerted action. Everyone here is trying to do the same thing. We're operating under the Prenda law firm.

MR. HANSMEIER: Again, your Honor, my law firm that I appeared through in this case was Alpha Law Firm. The other side likes to say that I'm involved with Prenda law firm and make these blanket statements, but the record is very clear on the point that my entry of appearance was through Alpha Law Firm, not through Prenda law firm.

* * *

THE COURT: Well, let me ask you this: What about the history of this? I've looked at all the papers in previous cases, and it has always been you and Mr. Duffy and - - I don't know - - someone else that have been operating under the Prenda law firm moniker. I mean this isn't the—this isn't the first time out of the block.

MR. HANSMEIER: Your Honor, I don't - - I'm not aware of what cases you are referring to. I appeared on behalf of the law firm Steele Hansmeier.

THE COURT: No. I'm talking about previous and other litigation. I mean, judges have even commented on that, I believe. Am I reading the record wrong? Is this your first time associating with Prenda law firm?

MR. HANSMEIER: I think in this—well, I have appeared as counsel of record in this case through Alpha Law Firm. I believe there was a signature block in this case with - -

THE COURT: I didn't ask you that question I'm talking about other cases in other venues at other times.

MR. HANSMEIER: I'm trying to wrack my memory. I don't know of another appearance I have had for Prenda law firm I can't think of one.

76. In fact:

a. On September 26, 2012, respondent filed an entry of appearance in *Guava, LLC v. CenturyLink, Inc.*, Hennepin County District Court File No. 27-cv-12-17079, in which he identified himself as of counsel to Prenda.

b. On October 31, 2012, respondent signed and filed a response to motion to stay discovery on behalf of Lightspeed in the *Lightspeed v. Smith* matter (12-cv-00889). Respondent signed that document as "Of Counsel to Prenda Law Inc."

c. On March 8, 2013, in the matter of *Ingenuity 13 LLC v. John Doe*, Case No. 2:12-cv-8333, United States District Court, Central District of California, John Steele submitted a declaration to the court under penalty of perjury that stated, in part, "I know Paul Hansmeier through my work with Prenda Law, Inc. He is also of counsel to the firm."

d. In that same action, on March 11, 2013, Brett Gibbs submitted a declaration to the court under penalty of perjury that stated, in part, that he was of counsel to Prenda and, "During the course of my work with Prenda, Mr. Steele and Mr. Hansmeier were the attorneys who informed me that they communicated with Prenda's clients, oversaw the litigations on behalf of those clients, and provided me with instructions and guidelines, which I was informed, originated from the clients. I reported to Mr. Steele and Mr. Hansmeier." Gibbs also testified under oath on March 11, 2013. He testified that he was "of counsel" to Prenda. When asked who supervised his work as of counsel, he testified that it was Paul Hansmeier and John Steele and that:

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

And they would give me general guidelines on what to do and sometimes the cases would be settled by John as was pointed out earlier, and sometimes they gave me certain parameters which I could settle the case myself.

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

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

e. On October 30, 2012, respondent filed an Entry of Appearance of Paul Hansmeier with the Hennepin County District Court in the matter of *Guava v. Merkel*, in which he identified himself as "Of Counsel Prenda Law, Inc."

f. From December 2011 through February 2012, respondent issued and signed checks drawn totaling more than $41,000 on the Alpha account that were used to pay Prenda's payroll obligations.

g. On February 13, 2013, respondent testified at a deposition in *AF Holdings v. Navasca* that Alpha utilized Prenda's trust account to deposit settlements received on behalf of AF Holdings.

h. From December 2011 through June 2012, Prenda paid at least $350,107.29 directly to respondent. From March 2012 through November 2012, Prenda paid at least $1,011,000 to Under the Bridge Consulting, a company in which respondent had a 50% ownership interest. Under the Bridge Consulting, in turn, paid to respondent at least $480,000 of the funds paid to them by Prenda.

i. On August 28, 2013, Brett Gibbs testified at a hearing in the matter of *AF Holdings v. Navasca* that he conferred weekly with respondent to discuss AF Holdings cases in which Gibbs was appearing as of counsel to Prenda. Navasca offered into evidence at the August 28 hearing evidence of hundreds of calls between Gibbs, Steele, and respondent and Gibbs confirmed that the phone numbers appearing in the exhibits outlining those phone calls were his and the phone numbers of Steele and respondent. In that same matter, Gibbs submitted a June 4, 2013, declaration in which he states he was formerly "of counsel" to Prenda Law, Inc.; that in that capacity he represented AF Holdings; and that "[A]t all relevant times I was supervised by attorneys John Steele and Paul Hansmeier with regard to AF Holdings' litigation, including this case."

j. As found by the Seventh Circuit Court of Appeals in its July 31 2014, opinion in the *Lightspeed* matter:

> Given the close connections among the lawyers, it was reasonable for the court to conclude that service on Duffy would suffice to give notice to Steele and Hansmeier as well. The behavior each one displayed throughout this litigation underscored their ongoing relationship and communication: they used one another's CM/ECF login information, filed motions on behalf of each other, and submitted substantially similar documents.

And:

> A quick look at publicly available documents supports the district court's finding that service on Duffy also accomplished service on Steele and Hansmeier. In its application for authorization to transact business in Florida, Steele Hansmeier, a Minnesota corporation, listed its mailing address as 161 N. Clark St. No. 3200, Chicago, IL 60601. Paul Hansmeier is listed as Manager and his address is listed as 1111 Lincoln Rd., Suite 400, in Miami Beach, Florida [citations omitted]. Interestingly, 161 N. Clark St. Suite 3200 is also listed as the principal place of business for Prenda Law, Inc., in its 2011 application for authorization to transact business in

> Florida. Its registered agent, Mark Lutz, uses the same Miami Beach address as Hansmeier did in the Steele Hansmeier application [citations omitted]. Alpha's connection to Steele Hansmeier and Prenda shows up in a search for Steele Hansmeier on Minnesota's business filing site. There, Steele Hansmeier lists its registered address as 80 S. 8th St. #900 *Alpha Law Firm*, Minneapolis, MN 55402.

77. On November 27, 2013, the court issued an order denying the motion to vacate or reconsider its October 30 order, granted the motions for attorney's fees filed by Comcast and AT&T, and assessed a total of $261,025 in attorney's fees against respondent, Duffy, and Steele and directing that the fees be paid within 14 days. In that order the court stated:

> By naming ComCast and AT&T as Defendants without any valid claims in an attempt to make an end run around the Illinois Supreme Court's [June 27, 2102] denial of discovery, Plaintiff unreasonably and vexatiously multiplied the proceedings in this matter.
>
> * * *
>
> The Court also finds that Duffy, Hansmeier, and Steele exhibited a "serious and studied disregard for the orderly process of justice." [Citations omitted.] These men have shown a relentless willingness to lie to the Court on paper and in person, despite being on notice that they were facing sanctions in this Court, being sanctioned by other courts [footnote omitted], and being referred to state and federal bars [footnote omitted], the United States Attorney in at least two districts [footnote omitted], one state Attorney General [footnote omitted], and the Internal Revenue Service [footnote omitted]. For example, at the November 13 hearing Hansmeier skirted the Court's direct questions, Steele made feigned protestations, and both flat-out lied about their association with Prenda Law, Inc. in the face of documentary evidence on the record in this case and their sworn declarations in other cases [footnote omitted].
>
> * * *
>
> The Court has also carefully considered the interrelationship between Duffy, Hansmeier, and Steele. The Court finds that these men acted in

concert throughout the entirety of the proceedings in this matter, share total responsibility for their actions, and are jointly and severally liable for the fees and costs of Defendants.

78. On December 12, 2013, respondent, Duffy, and Steele filed a notice of appeal of the November 27, 2013, order.

79. On December 27, 2013, the defendants in the Lightspeed matter brought a motion seeking to have respondent, Steele, and Duffy held in contempt for failure to comply with the court's November 27, 2013, order. That motion noted that none of the plaintiff's counsel (respondent, Steele, and Duffy) had complied with the fee order or sought a stay of its enforcement.

80. On February 13, 2014, a hearing was held on the contempt motion. At that hearing, respondent acknowledged that he had made no payments against the fees ordered on November 27. Instead, respondent argued that it was improper to hold him in contempt because the November 27 order was actually a judgment, not an equitable decree and that he did not have the ability to pay the amounts ordered.

81. At the February 13 hearing, the court ruled that the November 27 order was not a money judgment, but a judgment based on a sanction and, therefore, was equitable in nature. The court further gave respondent, Steele and Hansmeier ten days to submit financial statements from a certified public accountant regarding their financial resources and ability to pay the sanction.

82. On March 24, 2014, the court issued an order granting the motion to hold respondent, Steele, and Duffy in contempt. The court held that both coercive and remedial sanctions were warranted. The court imposed an additional sanction on respondent, Steele, and Duffy in an amount of 10% of the original sanction amount—$26,102.58. The court further directed respondent, Steele, and Duffy to comply with the November 27 sanctions order and its order within seven days, on or before March 31, 2014. In its order, the court stated:

> There is no debate as to whether plaintiff's counsel [respondent, Steele, and Duffy] significantly violated Judge Murphy's November 27, 2013, order (hereinafter "Sanctions Order"). As previously indicated, plaintiff's counsel has not made a single payment. Furthermore, Duffy, Hansmeier, and Steele failed to make a reasonable and diligent effort to comply with the Sanctions order.
>
> * * *
>
> In the case where there has been no attempt to comply with the Court's order, plaintiff's counsel must show a "complete inability to pay."

(Citation omitted.)

> The Court finds that plaintiff's counsel has not met its burden. They submitted incomplete, and to say the least suspicious, statements of financial condition. Attached to each statement was a letter from their certified public accountant ("CPA"). In these letters, the CPA indicates a departure from generally accepted accounting principles. He further notes that plaintiff's counsel elected to omit substantially all of the disclosures required by generally accepted accounting principles. The Court finds these statements insufficient to establish plaintiff's counsel's inability to pay.
>
> Plaintiff's counsel significantly violated an unambiguous order of the Court. They also failed to meet their burden regarding their inability to pay defense. Accordingly, the Court finds plaintiff's counsel Paul Duffy, Paul Hansmeier, and John Steele in civil contempt and defendants' joint motion for contempt is granted.

83. On March 31, 2014, respondent, Duffy, and Steele filed a notice of appeal of the March 24, 2014, order.

84. On July 31, 2014, the United States Court of Appeals for the Seventh Circuit issued an opinion on respondent's appeal to the district court's November 27, 2013, and March 24, 2014, orders. In that opinion, the Court of Appeals affirmed both orders, stating, in part:

> While appellants huff that the district court "wholly gloss[ed] over the fact that Hansmeier noticed his appearance in the case for Alpha Law Firm,

not Prenda Law," the district court had ample reason to find the Prenda/Alpha distinction illusory at best, fraudulent at worst. Two days *after* Steele moved to withdraw from this case, he declared in another action that he was "of counsel with the law firm, Prenda Law, Inc." and that Hansmeier was "also of counsel to the firm." Declaration of John Steele, *Ingenuity 13 LLC v. John Doe*, Case No. 2:12-cv-08333-ODW-JC, ECF No. 83 ¶¶ 1,4 (C.D. Cal. Filed Mar. 8, 2013). And this is to say nothing of the fact that at least once Hansmeier indicated *in this case* that he was of counsel to Prenda.

* * *

Lightspeed's suit against the ISPs was premised on the notion that because the ISPs challenged appellant's subpoena of the personally identifiable information of Smith's 6,600 "co-conspirators," they somehow became part of a purported plot to steal Lightspeed's content. If there was any conceivable merit in that theory, then perhaps fees would have been inappropriate. But there was not.

* * *

The district court similarly did not abuse its discretion in awarding attorney's fees to Smith from the inception of the suit. Lightspeed raised baseless claims and presses for a meritless "emergency" discovery hearing. The district court found that the litigation "smacked of bully pretense." At the November 13, 2013, hearing on fees, the court could not have been more clear: it stated that appellants were engaged in "abusive litigation . . . simply filing a lawsuit to do discovery to find out if you can sue somebody. That's just utter nonsense." We see no need to belabor the point. The record amply supports the district court's conclusions, as our discussion of the case thus far demonstrates. There was no abuse of discretion in the court's decision to grant either the ISPs or Smith's fees for the entire case.

* * *

The court found that appellants had willfully violated the sanctions order and made no effort to comply. The magnitude of harm was significant, it added, particularly as the underlying case was baseless and a misuse of the courts.

Additionally, the court found appellants to have made misrepresentations and presented "half-truths" at the show-cause hearing, showing clear disrespect for the court. Taking all of this into account, the court sanctioned appellants in the amount of 10% of the original sanction and ordered the sum to be divided equally among them. It also set up a schedule of additional fines if they failed to comply.

* * *

The district court's original order was unambiguous. The court made clear that it was imposing sanctions pursuant to 28 U.S.C. § 1927 and explicitly commanded appellants to pay within 14 days. Appellants try to evade it by arguing that they thought the order was for a money judgment. But this was neither private nor public litigation against the attorneys. What was at stake was the court's power to govern its bar.

* * *

Appellants next argue that there is no evidence that they did *not* substantially comply with the order, or at least take reasonable and diligent steps to do so. This position ignores the record. At the show-cause hearing appellants made clear that they had not paid anything and, when questioned about payment, they never pointed to any step in that direction. They elected instead to defend on the ground that they were unable to pay. Inability to pay is indeed a valid defense in contempt proceedings, *In re Resource Tech. Corp.*, 624 F.3d 376, 387 (7th Cir. 2010), but the question *whether* the sanctions were paid is different from the question *why* payment was not made. The district court was entitled to answer the first one in the negative, given appellants' admission on the record that they had neither paid the required amount to defendants nor posted a supersedeas bond.

* * *

Appellants' related argument that the court's inability-to pay analysis was an abuse of discretion is equally unavailing. Where "there has been no effort at even partial compliance with the court's order, the inability-to-pay defense requires a showing of a 'complete inability' to pay"; appellants "had the burden of establishing 'clearly, *plainly*, and *unmistakably*' that 'compliance is *impossible*.'" [Citation omitted.]

85. On March 20, 2014, Smith brought an *ex parte* motion seeking to hold respondent, Steele, and Duffy in contempt for, among other things, interfering in discovery.

86. On April 18, 2014, Smith brought a second motion for discovery sanctions.

87. On November 18, 2014, the court denied Smith's March 20 and April 18 motions.

88. On December 15, 2014, Smith brought a motion for reconsideration of the November 18, 2014, order. The motion alleged, in part, that respondent had made false representations to the court regarding his inability to pay the sanctions ordered and that he, in fact, had access to at least $515,000 that he had transferred to an organization called Monyet, LLC. (*See also* paragraph 43 above.)

89. On June 5, 2015, the court issued an order finding, among other things, respondent in contempt of court for making false statements with respect to his alleged inability to pay the sanctions previously ordered by the court. The court awarded sanctions against respondent and Steele in the amount of $65,263 for their contemptuous statements and directed that the sanctions be paid on or before July 15, 2015. In making its order the court noted that respondent had signed and filed memoranda with the court claiming the court's sanction posed a "crippling financial liability" and stated:

> As to Hansmeier, Smith presents evidence that, in the years leading up to the judgment against him, Hansmeier had transferred nearly half a million dollars to a company called Monyet LLC, of which Hansmeier was the sole member, manager, and signatory for its accounts. In a debtor's exam of a related proceeding in June 2014 [footnote referencing exam in *Guava v. Merkel* omitted], Hansmeier admitted that Monyet, LLC was set up as a trust for his son for purposes of estate planning. However, documents from Scottrade, Inc. reveal that Monyet, LLC was not solely associated with estate planning, as the bulk of its assets went towards expenses such as payment of appellate bonds and attorney's fees, investments in Livewire Holdings, Inc., and loans to his Class Justice LLC

law firm. Said expenditures occurred throughout the 2013 year and up to May 2014, demonstrating that Hansmeier had access to the Monyet funds both before and after he pled insolvency to the court.

90. On July 6, 2015, respondent filed a notice of appeal appealing the June 5, 2015, order.

91. On August 17, 2015, respondent filed a motion to stay the appellate proceedings because he had filed for bankruptcy.

92. On September 2, 2015, the court denied respondent's motion to stay the appellate proceedings.

93. As of the date of this petition, that appeal is still pending.

94. Respondent's conduct in the *Lightspeed v. Smith* matter in participating in the bringing of an action that did not have a basis in law or fact; in making false and misleading statements regarding his involvement with Prenda; in failing to pay attorneys' fees assessed against him; and in making false statements to the court with respect to his inability to pay sanctions ordered by the court violated Rules 3.1, 3.3(a), 3.4(c), 4.1, and 8.4(c) and (d), Illinois Rules of Professional Conduct.[1]

THIRD COUNT

Ingenuity 13 LLC v. John Doe Matter

95. On September 27, 2012, Ingenuity 13 LLC filed a complaint in federal district court for the central district of California naming John Doe as a defendant. The complaint was signed by attorney Brett Gibbs as of counsel to Prenda.

96. The complaint alleged copyright infringement by unknown persons with respect to an adult entertainment video titled, "A Peek Behind the Scenes at a Show" and alleged that the defendant and others used "BitTorrent protocol" to illegally download and distribute Ingenuity 13's copyright protected video.

[1] Rule 8.5(b), MRPC, provides that the Rules of Professional Conduct to be applied in the exercise of the disciplinary authority of this jurisdiction are, for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits.

97. On October 8, 2012, Gibbs, on behalf of Ingenuity 13, brought an *ex parte* application for leave to take expedited discovery. The application sought permission to serve discovery on Verizon Online, an ISP, for the purpose of determining the identity of John Doe.

98. On October 9, 2012, the court issued an order granting Ingenuity 13's application to serve discovery.

99. On November 28, 2012, attorney Morgan Pietz brought an *ex parte* application on behalf of John Doe to stay the return of the subpoena served on Verizon in order to preclude them from providing the true identity of John Doe to Ingenuity 13.

100. On November 29, 2012, the court granted a 30-day stay on the return of the subpoena served on Verizon.

101. On December 20, 2012, the court issued an order vacating its prior discovery order authorizing subpoenas and quashed any subpoenas issued pursuant to that order. The court further ordered Ingenuity 13 to show cause by December 31, 2012, why early discovery is warranted. In the order the court stated, in part:

> The Court is concerned with the potential for discovery abuse in cases like this. Ingenuity 13 accuses the Doe Defendant of illegally copying a pornographic video. But the only information Ingenuity 13 has is the IP address of the Doe Defendant. An IP address alone may yield subscriber information. But it will only lead to the person paying for the internet service and not necessarily to the actual infringer, who may be a family member, roommate, employee, customer, guest, or even a complete stranger. [Citation omitted]. And given the subject matter of Ingenuity 13's accusations and the economics of defending such a lawsuit, it is highly likely that the subscriber would immediately pay a settlement demand – regardless whether the subscriber is the actual infringer. This Court has a duty to protect the innocent citizens of this district from this sort of legal shakedown, even though a copyright holder's rights may be infringed by a few deviants . . . . Thus, when viewed with the public interest in mind, the Court is reluctant to allow any fishing-expedition discovery when all plaintiff has is an IP address – the burden is on the

plaintiff to find other ways to more precisely identify the accused infringer without causing collateral damage.

102. On January 28, 2013, Ingenuity 13 filed a voluntary dismissal without prejudice of its action against John Doe.

103. On February 7, 2013, the court issued an order to show cause directing Brett Gibbs to appear in court on March 11, 2013. The court expressed concern that Gibbs had violated Rule 11 of the Federal Rules of Civil Procedure and Local Rule 83-3 and stated, in part, "This order to show cause is scheduled for hearing on March 11, 2013, at 1:30 p.m., to provide Mr. Gibbs the opportunity to justify his conduct."

104. On March 5, 2013, the court issued an order directing additional persons to appear at the March 11, 2013, hearing. Respondent was one of the persons ordered to appear.

105. Respondent did not appear at the March 11, 2013, hearing as ordered.

106. On March 14, 2013, the court issued an order denying an *ex parte* application filed on behalf of respondent and others requesting the court to withdraw the March 5 order directing respondent and others to attend the March 11 hearing. The court further ordered that respondent and others appear before the court on March 29, 2013, to show cause (1) why they should not be sanctioned for their participation, direction, and execution of the acts described in the court's February 7, 2013, order to show cause; (2) why they should not be sanctioned for failing to notify the court of all parties that have a financial interest in the outcome of the litigation; (3) why they should not be sanctioned for defrauding the court by misrepresenting the nature and relationship of various individuals and entities involved in the underlying litigation; (4) why respondent and John Steele should not be sanctioned for failing to make a *pro hac vice* appearance before the court given their involvement as "senior attorneys" in the cases; and (5) why respondent and others should not be sanctioned for failure to appear

before the court on March 11, 2013, as they were ordered. The court later continued the March 29 hearing to April 2, 2013.

107. Respondent appeared at the April 2, 2013, hearing but did not testify or otherwise address the court. Instead, counsel representing respondent at that hearing told the court that respondent would exercise his Fifth Amendment privilege against forced testimony and would not respond to questions from the court.

108. On May 6, 2013, the court issued an order awarding the defendants attorney's fees in the total amount of $81,319.72. The court directed respondent, John Steele, Paul Duffy, Brett Gibbs, Prenda, AF Holdings and Ingenuity 13 to pay the fees within 14 days of the date of the order. In its order, the court stated:

> Plaintiffs have outmaneuvered the legal system. [Footnote omitted.] They've discovered the nexus of antiquated copyright laws, paralyzing social stigma, and unaffordable defense costs. And they exploit this anomaly by accusing individuals of illegally downloading a single pornographic video. Then they offer to settle – for a sum calculated to be just below the cost of a bare-bones defense.
>
> * * *
>
> Steele, Hansmeier, and Duffy ("Principals") are attorneys with shattered law practices. Seeking easy money, they conspired to operate this enterprise and formed the AF Holdings and Ingenuity 13 entities (among other fungible entities) for the sole purpose of litigating copyright-infringement lawsuits. They created these entities to shield the Principals from potential liability and to give the appearance of legitimacy.
>
> * * *
>
> The Principals maintained full control over the entire copyright-litigation operation. The Principals dictated the strategy to employ in each case, ordered their hired lawyers and witnesses to provide disinformation about the cases and the nature of their operation, and possessed a financial interests in the outcome of each case.

* * *

> Second, there is little doubt that Steele, Hansmeier, Duffy, Gibbs suffer from a form of moral turpitude unbecoming of an officer of the court. To this end, the Court will refer them to their respective state and federal bars.

109. On May 15, 2013, respondent filed a notice of appeal of the court's order dated May 6, 2013, as well as other orders issued by the court. As of the date of this petition, that appeal was still pending.

110. Respondent's conduct in the *Ingenuity 13 v. Doe* matter in failing to appear at a hearing ordered by the court and bringing an action without merit and for an improper purpose violated Rules 3-200 and 3-500, California Rules of Professional Conduct.

FOURTH COUNT

AF Holdings, LLC v. Joe Navasca Matter

111. On May 10, 2012, Brett Gibbs, acting as of counsel to Prenda, filed a complaint on behalf of AF Holdings, LLC against John Doe in the United States District Court for the Northern District of California. The complaint alleged copyright infringement with respect to the adult entertainment video "Popular Demand" and asserted that the defendant, at that time, was known only by an IP address.

112. On May 30, 2012, Gibbs brought an *ex parte* motion seeking leave of the court to serve discovery on SBC Internet (a wholly-owned subsidiary of AT&T), an ISP that was alleged to have provided Internet access to the alleged copyright infringer.

113. On June 4, 2012, the court issued an order granting the request for expedited discovery.

114. On October 26, 2012, Gibbs filed an amended complaint substituting Joe Navasca as defendant in place of the previously named John Doe.

115. On December 12, 2012, Navasca's attorney, Nicholas Ranallo, brought a motion asking the court to require AF Holdings to post an undertaking in the amount of

$84,250 to cover the costs and fees expected to be incurred by Navasca in the defense of the action.

116. On February 5, 2013, the court issued an order granting Navasca's motion and requiring AF Holdings to post an undertaking in the amount of $50,000.

117. On February 19, 2013, respondent testified at a deposition as the person designated by AF Holdings to testify on its behalf pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure.

118. At the February 19, 2013, deposition, respondent testified in a false and misleading manner as to his affiliation with Prenda as follows:

Q. Did you ever work for Prenda Law, Inc.?

A. No.

Q. You were never attorney of record with Prenda Law, Inc.? You were never of counsel there?

A. I guess I'd have to go back over the various appearances that I filed. I don't recall anything specifically. Does that mean that there's not one on record somewhere, I can't say with exact certainty.

* * *

Q. So Steele Hansmeier was formally dissolved and then as soon as you dissolved Steele Hansmeier, did you at that point work for Prenda Law at all?

A. Not as an employee, no.

Q. In what capacity?

A. Part of my role – I guess I had no formal affiliation with Prenda Law. I don't believe I can point to any specific affiliation. Part of it we wanted to aid Prenda Law in transitioning from, you know, Steele Hansmeier operating the cases and whatnot. Prenda Law was appearing in a lot of the case, so there's a natural, you know, kind of aid them, help them facilitate the transfer.

* * *

Q. So who was responsible for handling the financial aspect of the transition?

A. I believe Mr. Steele would have been in charge of managing – the handling of funds.

In fact, as noted above in paragraph 76, respondent had close associations with Prenda and regularly appeared as counsel for Prenda.

119. Respondent further testified in a false and misleading manner as to his financial involvement in Prenda, testifying that he was not responsible for the financial aspect of the transition from Steele Hansmeier to Prenda. In fact, respondent was active in the financial affairs of Prenda after its transition from Steele Hansmeier (*see* paragraph 76 above).

120. On February 21, 2013, Gibbs, on behalf of AF Holdings, filed a motion to dismiss the action against Navasca without prejudice.

121. On April 23, 2013, the court issued an order dismissing AF Holdings' action against Navasca *with* prejudice. In that order, the court found that AF Holdings would likely face an adverse determination on the merits because of its apparent inability to prove standing to assert its claim of copyright infringement and that AF Holdings' dismissal was also an attempt to avoid rulings of the court that have been unfavorable to it—namely, the order requiring the undertaking.

122. On June 4, 2013, Ranallo brought a motion on behalf of Navasca seeking an award of attorney's fees.

123. On July 2, 2013, Ranallo brought a motion for sanctions seeking an order holding respondent and Steele jointly and severally liable for the attorney's fees and costs incurred by Navasca. That motion was set on for hearing on August 28, 2013.

124. On July 22, 2013, the court issued an order granting Navasca's motion for attorney's fees and assessed fees and costs totaling $22,531.93 against AF Holdings. In

that order the court found that AF Holdings' case was frivolous and objectively unreasonable.

125. On August 20, 2013, the court issued an order detailing various issues it wished to be addressed at the August 28 hearing on Navasca's motion for sanctions.

126. On September 16, 2013, United States Magistrate Judge Nandor Vadas issued a report and recommendation on the motion for sanctions against respondent and Steele. Magistrate Judge Vadas concluded that, because the court appears to lack personal jurisdiction over respondent and Steele, he could not recommend imposition of sanctions against them. Instead, he recommended that the district court issue an order to show cause why respondent and Steele ought not be added as judgment debtors to the award of attorney's fees previously made against AF Holdings. In his recommendation, Magistrate Judge Vadas found, in part:

> Paul Hansmeier and John Steele are attorneys, former partners in Steele Hansmeier and "principals" of Prenda Law, Inc. For all material purposes here, Prenda Law, Inc. is a mere continuation of Steele Hansmeier . . . Brett Gibbs testified that Hansmeier and Steele continue to perform the same roles at Prenda that they had performed at Steele Hansmeier, and that business continued to operate in the same manner.
>
> * * *
>
> [T]hat there is ample evidence before the court that Steele and Hansmeier engaged in bad faith conduct, and perpetrated fraud upon the court.

127. On October 16, 2013, United States District Court Judge Edward Chen issued an order adopting the report of Magistrate Judge Vadas and ordered respondent and Steele to show cause as to why the judgment for attorney's fees against AF Holdings ought not be amended to add respondent and Steele as debtors. A hearing on the order to show cause was set for December 19, 2013.

128. On December 5, 2013, having received payment in full of the attorney's fees awarded, Navasca withdrew his motion to add respondent and Steele as judgment debtors.

129. Respondent's conduct in the *AF Holdings V. Navasca* matter in testifying in a false and misleading manner with respect to his involvement with Prenda; in bringing a frivolous claim against Navasca; and in perpetrating a fraud upon the court violated Rules 3-200 and 5-200, California Rules of Professional Conduct.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring or suspending respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 28, 2015.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and

PATRICK R. BURNS
FIRST ASSISTANT DIRECTOR
Attorney No. 0134004