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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos.14-16895
15-17339

D.C. No. 3:13-cv-04280-VC

[Filed December 14, 2017]

INDIEZONE, INC. and EOBUY, LIMITED,	)
	)
Plaintiffs-Appellants,	)
	)
CONOR FENNELLY, CEO and	)
DOUGLAS RICHARD DOLLINGER, Counsel,	)
	)
Appellants,	)
	)
v.	)
	)
TODD ROOKE; JOE ROGNESS; PHIL HAZEL;	)
SAM ASHKAR; HOLLY OLIVER; JINGIT	)
HOLDINGS, LLC; JINGIT FINANCIAL	)
SERVICES, LLC; MUSIC.ME, LLC;	)
SHANNON DAVIS; JUSTIN JAMES;	)
CHRIS OHLSEN; DAN FRAWLEY;	)
DAVE MOREHOUSE II; TONY ABENA;	)
U.S. BANK; WALMART STORES, INC.;	)
GENERAL ELECTRIC COMPANY;	)

TARGET STORES, INC.; JINGIT LLC; CHRIS KARLS; JOHN E. FLEMING,

Defendants-Appellees.

MEMORANDUM[*]

Appeal from the United States District Court
for the Northern District of California
Vince Chhabria, District Judge, Presiding

Argued and Submitted November 16, 2017
San Francisco, California

Before: RAWLINSON and BYBEE, Circuit Judges, and FRIEDMAN,[**] District Judge.

In this consolidated appeal, appellants seek review of the district court's order imposing sanctions, as well as its subsequent order denying their FRCP 60(b) motion for relief from judgment. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm the district court's decisions.

We review the district court's imposition of sanctions for abuse of discretion. *F.J. Hanshaw Enters. v. Emerald River Dev.*, 244 F.3d 1128, 1135 (9th Cir. 2001). In addition, motions for relief from judgment are ordinarily committed "to the sound discretion of the district court" and, as a result, "will not be reversed

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Paul L. Friedman, United States District Judge for the District of Columbia, sitting by designation.

absent some abuse of discretion." *Exp. Grp. v. Reef Indus., Inc.*, 54 F.3d 1466, 1469 (9th Cir. 1995). "We review de novo, however, a district court's ruling upon a Rule 60(b)(4) motion to set aside a judgment as void, because the question of the validity of a judgment is a legal one." *Id*. We decline to review any argument raised for the first time on appeal. *See Solis v. Matheson*, 563 F.3d 425, 437 (9th Cir. 2009).

1. The district court did not abuse its discretion in finding, as a matter of fact, that appellants had engaged in sanctionable bad faith conduct. The court so found after holding an evidentiary hearing on August 6, 2014—a hearing that appellants had requested and for which they had ample opportunity to prepare. Prior to the hearing, the district court provided clear directives to appellants and explicitly warned that they could face sanctions, including dismissal, for their failure to comply. In addition, although appellants repeatedly failed to meet deadlines, the district court accommodated several requests for extensions, while denying others. In doing so, the district court reasonably managed its docket and the case schedule while affording all parties an opportunity to prepare and be heard. Despite these directives, warnings, and accommodations, appellants did not present any evidence at the hearing.

Beyond appellants' failures to comply with the district court's orders, the order imposing sanctions highlighted numerous contradictions and inconsistencies that suggested appellants had attempted to create and advance a sham plaintiff. The false and misleading declarations submitted by Fennelly conflicted with one another, as well as with

the evidence presented by defendants. In particular, Fennelly proffered evasive and conflicting explanations as to the nature of certain corporate filings and the dates on which those documents were originally created and submitted to the CRO. Publicly available records indicated that Laraghcon Chauffeur Drive Limited—the company alleged to have become the eoBuy entity in 2008—had in fact operated exclusively as a taxi company from 2008 to 2014 and did not hold any intellectual property assets. Appellants also failed to proffer any documentation to connect Fennelly to Laraghcon prior to 2014, to demonstrate the existence or function of the purported holding company Amdex, or to show that any of the alleged high-value intellectual property transfers had in fact taken place. To the contrary, the evidence suggested that Fennelly had attempted to manufacture an eoBuy entity in 2014 after discovering that the original eoBuy plaintiff lacked capacity to sue, only choosing to purchase and convert Laraghcon because the taxi company had the requisite incorporation date of July 15, 2008—the same date Fennelly had alleged to be the CRO registration date of eoBuy Licensing Limited.

On these facts, the district court did not abuse its discretion in finding that appellants had engaged in sanctionable conduct. The record amply supported the district court's finding that appellants had submitted multiple misleading and false declarations and fraudulent documents in bad faith in order to create a sham plaintiff, and appellants failed to offer any credible explanation to the contrary.

2. The district court did not abuse its discretion or otherwise err in sanctioning Fennelly pursuant to its inherent authority, even though he was not a party to the case. We have established that a district court may use its inherent powers to sanction non-parties for abusive litigation practices. *See Corder v. Howard Johnson & Co.*, 53 F.3d 225, 232 (9th Cir. 1995). Because Fennelly purported to be the CEO of both Indiezone and eoBuy, authored the declarations found to be the primary source of the bad faith conduct, and was subject to—yet disobeyed—a court order explicitly directing him to appear and testify at the hearing on sanctions, the district court had authority to sanction Fennelly under its inherent powers.

3. The district court did not abuse its discretion or otherwise err in sanctioning Dollinger. Where a court sanctions an attorney pursuant to its inherent powers, some showing of bad faith is required. *See Fink v. Gomez*, 239 F.3d 989, 992–93 (9th Cir. 2001). Similarly, sanctions imposed pursuant to 28 U.S.C. § 1927 must be supported by a finding of bad faith. *See Blixseth v. Yellowstone Mountain Club, LLC*, 796 F.3d 1004, 1007 (9th Cir. 2015). A district court may find such bad faith "when an attorney has acted recklessly if there is something more," such as frivolousness, harassment, or an improper purpose. *Fink*, 239 F.3d at 993–94. "[A] finding that the attorney recklessly or intentionally misled the court" or "a finding that the attorney[] recklessly raised a *frivolous* argument which resulted in the multiplication of the proceedings" amounts to the requisite level of bad faith. *Franco v. Dow Chem. Co.* (*In re Girardi*), 611 F.3d 1027, 1061 (9th Cir. 2010 (citations omitted). In addition, "recklessly or intentionally misrepresenting facts

constitutes the requisite bad faith" to warrant sanctions, as does "recklessly making frivolous filings." *Id.* at 1061–62 (internal quotations and citations omitted).

Dollinger had notice as early as January 10, 2014, that issues regarding the corporate status of eoBuy existed. By March 3, 2014, Dollinger also had notice that Fennelly's proffered explanations were plainly inconsistent with the CRO's public record. Despite this, Dollinger continued to file declarations and motions that adopted and advanced Fennelly's misrepresentations. He did so in a manner that, at best, recklessly disregarded the truthfulness of those representations. Finally, Dollinger's oral representations to the district court, made at hearings held on June 5 and August 6, 2014, strained believability in light of the record presented.

The district court therefore did not abuse its discretion in sanctioning Dollinger.

4. The district court did not abuse its discretion in imposing the most serious sanction available, dismissal of the case with prejudice. It did so only after carefully considering the evidence and procedural history and weighing the relevant factors on the record. *See Thompson v. Hous. Auth. of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). It also carefully considered less severe sanctions, but found dismissal to be the only appropriate sanction. *See Hamilton Copper & Steel Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir. 1990). The district court specifically found that appellants had deliberately engaged in deceptive practices that undermined the integrity of judicial proceedings and willfully deceived the court. *See*

Anheuser-Busch, Inc. v. Nat. Beverage Distribs., 69 F.3d 337, 348–49 (9th Cir. 1995). It explained that dismissal was appropriate "due to the egregious and fundamental nature of the fraud," which "[struck] to the heart of the case," and because "anything less than dismissal with prejudice [would] permit the plaintiffs and Dollinger to bring this vexatious and fraudulent suit again." Therefore, while the sanction of dismissal should be imposed only in "extreme circumstances," *see Hamilton Copper & Steel Corp.*, 898 F.2d at 1429, considering the circumstances presented here, the district court did not abuse its discretion in dismissing this case with prejudice.

5. Largely for the reasons already discussed, we also conclude that the district court did not abuse its discretion or otherwise err in denying relief from its order pursuant to Rule 60(b).

First, appellants failed to justify relief from judgment on the basis of newly discovered evidence pursuant to Rule 60(b)(2). Although we note that appellants have not made clear why they could not have reasonably acquired the proffered CRO "metadata" prior to the August 2014 hearing on sanctions and, therefore, why it amounted to "newly discovered" evidence, *see Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 211–12 (9th Cir. 1987), we need not decide this question. Appellants were not entitled to relief under Rule 60(b)(2) because the metadata was not "of such magnitude that production of it earlier would have been likely to change the disposition of the case." *See Jones v. Aero/Chem Corp.*, 921 F.2d 875, 878 (9th Cir. 1990) (quoting *Coastal Transfer Co.*, 833 F.2d at 211).

To the contrary, the information recovered from the CRO's metadata files, and presented now as "newly discovered" evidence, is entirely unresponsive to numerous concerns and discrepancies discussed by the district court in its order imposing sanctions. Furthermore, the metadata remains entirely inconsistent with the claims made by Fennelly and Dollinger—found by the district court to be false and misleading—that Mr. Fennelly had filed the eoBuy Ventures Limited name change *in 2008* and "simply forgot" that the CRO had rejected it. Thus, the metadata evidence does not undermine the district court's determination that appellants had engaged in sanctionable conduct intended to manufacture an eoBuy entity and avoid arbitration and, in turn, would not have been likely to change the disposition of the case.

Second, appellants are not entitled to relief pursuant to Rule 60(b)(3) because they have not proven "by clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct" or that any conduct on the part of defendants prevented them "from fully and fairly presenting [their] case or defense." *See id*. (citation omitted). Third, appellants are not entitled to relief pursuant to Rule 60(b)(4) because they have not demonstrated that the judgment was "so affected by a fundamental infirmity" as to be void. *See U.S. Air Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010). Finally, appellants have not presented "any other reason" that would justify relief from the district court's order imposing sanctions. FED. R. CIV. P. 60(b)(6).

For the foregoing reasons, the district court's order imposing sanctions and its subsequent order denying appellants' motion for relief from judgment are **AFFIRMED.**

***Indiezone, Inc*., Case Nos. 14-16895 and 15-17339**
Rawlinson, Circuit Judge, concurring:

I concur in the result.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 13-cv-04280-VC

[Filed September 2, 2014]

INDIEZONE, INC., et al., Plaintiffs,

v.

TODD ROOKE, et al., Defendants.

ORDER GRANTING MOTION FOR SANCTIONS

Re: Docket No. 104

Before the Court is a motion for sanctions against the plaintiffs, their CEO, Conor Fennelly, and their counsel, Douglas Dollinger, for submission of fraudulent documents and false declarations to the Court, and for vexatiously multiplying the proceedings. Having now reviewed the numerous filings by the parties related to the motion for sanctions, as well as the motions to dismiss, compel arbitration, stay the case, and amend the complaint to add various plaintiffs, and having held two hearings, including an

evidentiary hearing, the Court grants the motion for sanctions.[1]

The original complaint was filed by the plaintiffs Indiezone and eoBuy Limited on September 16, 2013. However, as the defendants discovered and detailed in the initial declaration of Brian Walker (Doc. No. 30), their qualified expert on Irish corporate law and corporate registration procedure, and as the plaintiffs later conceded, eoBuy Limited was an Irish company that is now defunct, having been removed from the Irish Register of Companies on April 4, 2008. The plaintiffs then sought to amend the complaint to add eoBuy Ventures Limited as a plaintiff. Once again, the defendants discovered the purported company, eoBuy Ventures Limited, does not exist, and the plaintiffs conceded that. Conor Fennelly (the alleged CEO of Indiezone and the eoBuy entities) stated in a declaration filed by Dollinger that he "simply forgot" that the Irish Companies Registration Office had not approved the name eoBuy Ventures Limited. *See* Walker Supp. Dec. (Doc. No. 61); Fennelly Supp. Dec. ¶ 4 (Doc. No. 84-3).

The plaintiffs then sought to amend the complaint a third time to add eoBuy Licensing Limited as a plaintiff. They contended, in their motion papers and in

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[1] The Court held a hearing on June 5, 2014, at which the motion for sanctions was argued. At the plaintiffs' request, an evidentiary hearing on the motion for sanctions was held on August 6, 2014. Dollinger appeared on behalf of the plaintiffs, but contrary to court order, Conor Fennelly did not appear. *See* Doc. No. 113. The plaintiffs and Dollinger did not offer any witnesses or exhibits. The defendants offered Brian Walker as a witness, and Dollinger cross and re-cross examined him.

declarations by Fennelly and Dollinger, that prior to dissolution, the former eoBuy Limited transferred its intellectual property rights to a holding company, Amdex pte, which in turn transferred the rights to eoBuy Licensing Limited. The Fennelly declaration represented that this occurred in 2008, and that since that time, eoBuy Licensing Limited has been doing business as eoBuy and holding the intellectual property that is the subject of this dispute. However, as Brian Walker's second supplemental declaration shows (Doc. No. 95), and as Walker testified at the evidentiary hearing, eoBuy Licensing Limited was not established until early 2014, when Fennelly caused the name of an existing-but-inactive taxi company to be changed to eoBuy Licensing Limited. From 2008 through 2013, the taxi company operated under the name Laraghcon Chauffeur Drive Limited and had two directors, Ciaran Byrne and Michael Byrne, and one secretary, Teresa Byrne. Each year, the company submitted annual returns under the name Laraghcon Chauffeur Drive Limited, signed by Ciaran Byrne and Teresa Byrne, but otherwise conducted no business. The returns show only one shareholder -- Ciaran Byrne.

At the hearings on June 5 and August 6, 2014, Dollinger represented that the taxi company and eoBuy Licensing Limited were the same company, and Fennelly simply forgot to change the corporate name. Counsel pointed to a document purporting to change the corporate name from Laraghcon Chauffeur Drive Limited to eoBuy Licensing Limited, dated July 15, 2008, but submitted to the Irish Companies Registration Office in March 2014, as proof that the companies were one and the same. Counsel represented that the company filed the paperwork to correct its

oversight. There are several problems with this explanation, however.

First and foremost, this document is fraudulent. Regardless whether the document was filed to correct a mistake or to perpetrate fraud, the document was clearly created recently and back-dated to July 2008. As Walker testified, the document could not have been created in 2008 for three reasons: (1) the barcode number is too close to another barcode number from 2014 (and the barcodes are sequential and automatically generated); (2) this particular barcode technology was not used in Ireland in 2008; and (3) the document's footer references the "Companies Act of 1963 - 2013," whereas a 2008 document would have cited an earlier version of the Act. Moreover, this document purports to change the name of the corporation; it does not attempt to correct a mistake. As Walker testified, a different procedure is followed to correct errors in corporate filings.

Furthermore, Fennelly's supporting declaration is false and misleading. Fennelly does not explain that there was an oversight in changing the corporate name, but instead misleadingly states that the company is "officially named eoBuy Licensing Limited and was registered under its former name in July 15, 2008." He further declares that the company "has been doing business as eoBuy since August 2008," a statement that runs counter to the numerous corporate filings showing Laraghcon conducted no business. Fennelly Supp. Dec. ¶¶ 4-5 (Doc. No. 84-3).

At the evidentiary hearing on sanctions, Dollinger also suggested that perhaps Fennelly was a silent shareholder of Laraghcon Chauffeur but the company

simply failed to submit a statutory report listing him as a shareholder. This explanation is implausible and unsupported. As Walker testified, it is highly unlikely that the company would have submitted information on one shareholder, Ciaran Byrne, but not for Fennelly. This theory also fails to justify the backdated corporate document or reconcile the remainder of the evidence.

The only remotely plausible explanation of the evidence is that Fennelly was attempting to create a sham plaintiff for the purpose of evading an arbitration provision by which the other plaintiff, Indiezone, is bound. After all, Fennelly created eoBuy Licensing Limited only upon the revelation that the other companies he was trying to use as a plaintiff, eoBuy Limited and eoBuy United States District Court Northern District of California Ventures Limited, did not exist. In creating this sham plaintiff, Fennelly submitted false declarations and fraudulent documents to the Court, on behalf of the plaintiffs, and these misrepresentations were then adopted by counsel in counsel's own declarations, motions, and oral argument.

Furthermore, the explanation that eoBuy Limited transferred its intellectual property to a holding company, Amdex pte, and then to eoBuy Licensing Limited (officially named Laraghcon) is implausible based on the record. There is no evidence to suggest that Amdex pte is a holding company (there is no certificate of incorporation or corporate registration number) or that it has ever held the IP assets of eoBuy. None of the balance sheets submitted show eoBuy held IP as an asset at any time from 2008 to the present, and there is no record of any transfer of IP to another

company. As Walker testified, it is standard practice to include IP assets in a company's financial statements, and it would be highly unusual not to, particularly where the IP is worth more than a billion dollars, as the plaintiffs represent here. At the hearing on sanctions, Dollinger pointed to a one-page document listing Amdex pte as the "care of" address for "Norbert Brull," an eoBuy shareholder in 2006. Defendants' Ex. 8, no. 5113915. But this document does not list any IP assets or show that Amdex pte is a holding company, much less a holding company for eoBuy Limited. This is insufficient in the face of the evidence to the contrary. The only believable explanation is that Fennelly made up the story about the transfer of IP (assuming eoBuy Limited ever owned any IP, as there is no evidence that the IP assets existed), to bridge the gap between the date eoBuy Limited was struck from the Irish register on April 4, 2008, and the date which eoBuy Licensing Limited was purportedly created, July 15, 2008.

A few other examples of false statements are worth mentioning. Fennelly represented that eoBuy Limited was dissolved voluntarily through a vote by the Board of Directors allowing the company to administratively dissolve. Fennelly Supp. Dec. ¶ 4 (Doc. No. 84-3). But the record shows that eoBuy was involuntarily struck from the Irish Companies Register for failing to submit its annual returns, and the plaintiffs have submitted no evidence to the contrary. Additionally, Fennelly stated in his supplemental declaration, which was submitted in support of the motion to add eoBuy Licensing Limited as a plaintiff, that he "simply forgot" that the Companies Registration Office had not approved the name eoBuy Ventures Limited. Fennelly

Supp. Dec. ¶ 4 (Doc. No. 84-3). This statement must be false. Unlike the name change request for eoBuy Licensing Limited, and all other corporate filings, there is no name change request for eoBuy Ventures Limited on the CRO list of submissions. Moreover, Fennelly's initial declaration regarding eoBuy Ventures is dated February 18, which was after he submitted the eoBuy Licensing Limited filings to the CRO on February 6, 2014. *See* Fennelly Dec. (Doc. No. 54-1); Walker Second Supp. Dec., Ex. C (Doc. No. 95-3). He therefore knew prior to making his sworn declaration that the company was not named eoBuy Ventures Limited. Dollinger adopts this lie in his own declaration on April 9, 2014, stating, "Mr. Fennely [sic] believed that the name chosen, eoBuy Ventures Ltd., was recorded by the Corporation Registry Office of Ireland when submitted. However, as it turned out the name was rejected and the alternative name was issued eoBuy Licensing Ltd." Dollinger Dec. (Doc. No. 91-1).

Despite ample opportunity to present evidence and witnesses to rebut allegations of fraud on the Court, the plaintiffs have failed to offer any credible, alternative explanation. The Court finds that the plaintiffs submitted multiple misleading and false declarations and fraudulent documents purporting to establish the existence of eoBuy, in various forms. Bad faith of this degree easily supports an award of sanctions under the Court's inherent powers. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991) (federal courts may assess sanctions against a party or counsel for bad faith conduct) (citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980)); *Fink v. Gomez*, 239 F.3d 989, 991-92 (9th Cir. 2001) (same). Sanctions are awarded in the amount of the defendants'

reasonable attorneys' fees and costs, including that of their foreign expert Brian Walker -- a total of $93,365.92.[2] The defendants' fees and costs are reasonable in light of the prevailing rates and given the time spent defending this case. *See* Keiko Decs. (Doc. Nos. 104-1, 111-1, and 140). The defendants have been forced to expend a tremendous amount of time and money responding to each of the plaintiffs' motions to add a plaintiff and litigating this motion for sanctions, including hiring foreign counsel due to the foreign status of the professed plaintiffs.

Indiezone, Inc., the eoBuy entities (eoBuy Limited, eoBuy Ventures Limited, and eoBuy Licensing Limited), Conor Fennelly, and Douglas Dollinger are held jointly and severally liable for this award because each contributed to the fraudulent conduct. *See Hyde & Drath v. Baker*, 24 F.3d 1162, 1170-72 (9th Cir. 1994) (holding the plaintiff corporations and their counsel were subject to joint and several liability because each participated in the improper conduct and the corporations either did not exist or were "mere paper shells," with some of them overlapping in their financing and management); *Avirgan v. Hull*, 125 F.R.D. 189, 190-91 (S.D. Fla. 1989) (holding plaintiffs, plaintiffs' counsel and plaintiffs' law firm all jointly and severally liable because each was involved in the sanctionable conduct). The plaintiff companies submitted the documents and motions as their own and participated in the strategy to defraud the Court. By

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[2] The defendants did not submit any documentation to support the travel costs of the Maslon attorneys or their Irish expert, Brian Walker. They are therefore awarded only half of their approximate travel costs, an amount of $3250, which is no doubt reasonable.

submitting the false declarations to the Court as the professed CEO of Indiezone and the eoBuy entities, Fennelly acted on his own behalf and as an agent for the companies and is therefore liable for the bad faith conduct. *See F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1144 (9th Cir. 2001) (holding a litigant personally liable for a sanctions award where he "acted on his own behalf and also as an agent of his corporation . . . in attempting to corruptly secure a benefit for both himself and his corporation").

Counsel for the plaintiffs also participated in this bad faith conduct. Despite having been put on notice that eoBuy did not exist and Fennelly's representations were suspect, Dollinger continued to file the plaintiffs' bad faith motions and to support and adopt Fennelly's misrepresentations in his own declarations and through motion and oral argument. Dollinger's misrepresentations to the Court far exceed the ethical bounds of advocacy and constitute bad faith. At a minimum, Dollinger has been reckless regarding the truth of his representations to the Court. Dollinger's actions throughout this litigation also demonstrate his intent to unreasonably and vexatiously multiply and manipulate the proceedings, including filing numerous motions to amend, filing numerous requests for extension of time, and failing to abide by court order on multiple occasions. Sanctions are therefore appropriate against Dollinger under the Court's inherent authority, as well as 28 U.S.C. § 1927.

This case is also dismissed with prejudice, pursuant to the Court's inherent power, because the plaintiffs have "engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings" and

"willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice." *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006) (quoting *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 347, 348 (9th Cir. 1995)). Dismissal is warranted in a case such as this one where a party has knowingly submitted false and misleading documents. *See Combs v. Rockwell Int'l Corp.*, 927 F.2d 486, 488-89 (9th Cir. 1991). Moreover, consideration of the five factors discussed in *Leon* warrants dismissal. *See Leon*, 464 at 958. The public's interest in expeditious resolution of litigation and the Court's need to manage its docket both support dismissal, because the sanctionable conduct has unnecessarily prolonged this case and wasted a tremendous amount of the Court's time. Given the Court's finding of bad faith and issuance of sanctions under its inherent authority, a showing of prejudice to the defendants is not needed (although the defendants have certainly labored under the misconduct of the sanctioned parties). *Nursing Home Pension Fund v. Oracle Corp.*, 254 F.R.D. 559, 564-65 (N.D. Cal. 2008) (explaining that "a district court need not consider prejudice to the party moving for sanctions" when acting pursuant to its inherent authority).

The Court also has considered less severe sanctions but finds dismissal against all defendants appropriate due to the egregious and fundamental nature of the fraud. The fraud strikes to the heart of the case, namely the parties involved and the owner of the IP, which is the subject of the dispute. There is also serious concern that anything less than dismissal with prejudice will permit the plaintiffs and Dollinger to bring this vexatious and fraudulent suit again, in this

district or elsewhere, as Dollinger has mentioned the possibility of a foreign suit in open court on several occasions. Additionally, the plaintiffs, Fennelly, and Dollinger were given multiple opportunities to defend against the sanctions motion, including a full evidentiary hearing and several rounds of briefing. The Court explicitly ordered Fennelly to appear at the evidentiary hearing and warned the plaintiffs that their case would be dismissed if they refused to participate fully. *See* Doc. Nos. 113, 133. Despite this notice, Fennelly did not appear and the plaintiffs did not introduce any witnesses or exhibits. And Dollinger's cross-examination of Brian Walker only revealed more clearly the falsity of the documents and arguments presented to the Court. Accordingly, the case is dismissed with prejudice against all defendants. The Court withdraws its order to compel arbitration and dismisses with prejudice the claims against Todd Rooke and Joe Rogness.

IT IS SO ORDERED.

Dated: September 2, 2014

s/_____
VINCE CHHABRIA
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13-cv-04280-VC

[Filed September 2, 2014]

INDIEZONE, INC., et al., Plaintiffs,	)
v.	)
TODD ROOKE, et al., Defendants.	)

JUDGMENT

The Court, having dismissed this case with prejudice, now enters judgment in favor of all defendants and against the plaintiffs. Indiezone, Inc., eoBuy Limited, eoBuy Ventures Limited, eoBuy Licensing Limited, Conor Fennelly, and Douglas Dollinger are ordered to pay the defendants $93,365.92 and are held jointly and severally liable for this amount. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: August 29, 2014

s/_____
VINCE CHHABRIA
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 13-cv-04280-VC

[Filed October 27, 2015]

INDIEZONE, INC., et al., Plaintiffs,

v.

TODD ROOKE, et al., Defendants.

ORDER

Re: Dkt. Nos. 165, 168

The motion for leave to file an oversized brief (Docket No. 168) is granted. The motion for relief from the judgment (Docket No. 165) is denied.

IT IS SO ORDERED.

Dated: October 27, 2015

s/_____
VINCE CHHABRIA
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15-17339

D.C. No. 3:13-cv-04280-VC
Northern District of California,
San Francisco

[Filed April 15, 2016]

INDIEZONE, INC., and EOBUY, LIMITED,	)
	)
Plaintiffs-Appellants,	)
	)
CONOR FENNELLY, CEO and DOUGLAS RICHARD DOLLINGER, Counsel,	)
	)
Appellants,	)
	)
v.	)
	)
TODD ROOKE; et al.,	)
	)
Defendants-Appellees.	)

ORDER

Before: GOODWIN, TALLMAN, and NGUYEN, Circuit Judges.

We sua sponte recall the mandate because there are "extraordinary circumstances" supporting such relief. *See Calderon v. Thompson*, 523 U.S. 538, 550 (1998).

We sua sponte vacate the January 26, 2016 order of dismissal. The December 10, 2015 order to show cause is discharged.

Appellant's request to remand this appeal is denied as unnecessary. *See* Fed. R. Civ. P. 62.1(a)(2) (the district court may entertain and deny a Rule 60(b) motion it would lack the authority to grant).

The court will set a new briefing schedule by separate order.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 14-16895
15-17339

D.C. No. 3:13-cv-04280-VC
Northern District of California,
San Francisco

[Filed April 19, 2018]

INDIEZONE, INC.; EOBUY, LIMITED,	)
	)
Plaintiffs-Appellants,	)
	)
CONOR FENNELLY, CEO;	)
DOUGLAS RICHARD DOLLINGER, Counsel,	)
	)
Appellants,	)
	)
v.	)
	)
TODD ROOKE; JOE ROGNESS; PHIL HAZEL;	)
SAM ASHKAR; HOLLY OLIVER; JINGIT	)
HOLDINGS, LLC; JINGIT FINANCIAL	)
SERVICES, LLC; MUSIC.ME, LLC;	)
SHANNON DAVIS; JUSTIN JAMES;	)
CHRIS OHLSEN; DAN FRAWLEY;	)
DAVE MOREHOUSE II; TONY ABENA;	)
U.S. BANK; WALMART STORES, INC.;	)
GENERAL ELECTRIC COMPANY;	)

TARGET STORES, INC.; JINGIT LLC; CHRIS KARLS; JOHN E. FLEMING,

Defendants-Appellees.

Before: RAWLINSON and BYBEE, Circuit Judges, and FRIEDMAN,* District Judge.

The panel judges have voted to deny appellants' petition for rehearing. Judges Rawlinson and Bybee voted to deny the petition for rehearing en banc, and Judge Friedman recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellants' petition for rehearing and petition for rehearing en banc, filed February 12, 2018, is **DENIED**.

* The Honorable Paul L. Friedman, United States District Judge for the District of Columbia, sitting by designation.

APPENDIX F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 13-cv-04280-VC

[Filed June 17, 2014]

INDIEZONE, INC., et al., Plaintiffs,	)
v.	)
TODD ROOKE, et al., Defendants.	)

ORDER GRANTING MOTIONS TO COMPEL, STAY, DISMISS; DENYING MOTIONS TO AMEND

Re: Docket Nos. 29, 35, 57, 76, 84, 90

Plaintiffs Indiezone and eoBuy Limited allege that Defendants Todd Rooke and Joe Rogness, former employees of Indiezone, stole Indiezone's and eoBuy Limited's intellectual property and misused it in the operation of their new company, Jingit, LLC. In addition to suing Rooke, Rogness, and Jingit (in all its corporate forms) for this conduct, the plaintiffs have included as defendants numerous Jingit employees, Target, Wal-Mart, General Electric, and US Bank, alleging a conspiracy to steal and misuse the intellectual property in violation of the Racketeer

Influenced and Corrupt Organizations Act. The parties have brought numerous motions, each of which is addressed below.

Motion to Dismiss eoBuy Limited as a Plaintiff

The defendants' motion to dismiss eoBuy Limited as a plaintiff is granted. As the defendants discovered and detailed in the initial declaration of Brian Walker (Docket No. 30), and as the plaintiffs now concede, eoBuy Limited was an Irish company that is now defunct, having been removed from the Irish Register of Companies on April 4, 2008.

Motion to Add eoBuy Ventures Limited as a Plaintiff

In response to this revelation, Indiezone filed a motion to amend or correct the complaint to add a new plaintiff, eoBuy Ventures Limited. This motion is denied, because as demonstrated by the supplemental declaration of Brian Walker (Docket No. 61), and as the plaintiffs now concede, eoBuy Ventures Limited also does not exist.

Motion to Add eoBuy Licensing Limited as a Plaintiff

Upon the defendants' discovery that eoBuy Ventures Limited also does not exist, the plaintiffs filed another motion seeking to add yet another plaintiff, eoBuy Licensing Limited. This motion is denied as well. The plaintiffs contend, in their motion papers and in a declaration filed by Conor Fennelly (the alleged CEO of Indiezone and the eoBuy entities), that prior to dissolution, the former eoBuy Limited transferred its intellectual property rights to a holding company,

which in turn transferred the rights to eoBuy Licensing Limited. The plaintiffs represent that this occurred in 2008, and that since that time, eoBuy Licensing Limited has been doing business as eoBuy and holding the intellectual property that is the subject of this dispute. However, as the second supplemental declaration of Brian Walker shows (Docket No. 95), eoBuy Licensing Limited was not established until early 2014, when Fennelly caused the name of an existing-but-inactive taxi company to be changed to eoBuy Licensing Limited. From 2008 through 2013, the taxi company operated under the name Laraghcon Chauffeur Drive Limited and had two directors, Ciaran Byrne and Michael Byrne, and one secretary, Teresa Byrne. Each year, the company submitted annual returns under the name Laraghcon Chauffeur Drive Limited, signed by Ciaran Byrne and Teresa Byrne, but otherwise conducted no business.

At the June 5, 2014 hearing, counsel for plaintiffs represented that the taxi company and eoBuy Licensing Limited were one and the same, and Fennelly simply forgot to change the corporate name. This explanation is implausible. The far more plausible explanation is that Fennelly was attempting to create a sham plaintiff for the purpose of evading an arbitration provision by which the other plaintiff, Indiezone, is bound. After all, Fennelly created eoBuy Licensing Limited only upon the revelation that the other company he was trying to use as a plaintiff, eoBuy Limited, did not exist. At this stage, given the number of chances the plaintiffs have had to amend the complaint, and given what they have chosen to do with those chances, it has become apparent that amending the complaint to add a plaintiff would be futile and

immediately subject to dismissal. *See Nordyke v. King*, 644 F.3d 776, 788 n.12 (9th Cir. 2011)

Motion to Compel Arbitration

The defendants move to compel arbitration of the dispute between Indiezone and defendants Rooke and Rogness, based on the arbitration provision in their employment agreement. The plaintiffs' primary argument in response is that their lawsuit includes claims for equitable relief (in addition to their claim for $1.32 billion in damages) and that the arbitration provision reserves resolution of equitable claims exclusively to the courts. However, the arbitration provision in the employment agreement is materially indistinguishable from the provision at issue in *Comedy Club, Inc. v. Improv W. Assoc.*, 553 F.3d 1277, 1285 (9th Cir. 2009). There, the Ninth Circuit applied California contract law to conclude that the provision was ambiguous about whether an arbitrator could decide equitable claims brought alongside claims for damages, and held that in such a case the federal presumption in favor of arbitration requires that it be compelled. *Id.* at 1285-86; *see also McKesson Corp. v. Health Robotics, S.R.L.*, 2011 WL 3157044, at *8-9 (N.D. Cal. July 26, 2011).

The plaintiffs also contend the arbitration provision does not apply because the employment agreement merely references a separate agreement about the confidentiality of intellectual property, rather than setting forth terms regarding intellectual property in the same document. Because that separate agreement does not itself contain an arbitration provision, the plaintiffs argue, any breach of that agreement is not subject to arbitration. However, the law contemplates

that an arbitration provision from one agreement can be incorporated into another agreement. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 723 (9th Cir. 1999) (finding an arbitration provision materially similar to the one here "reaches every dispute between the parties having a significant relationship to the contract," including a dispute arising under a contract that does not contain an arbitration provision but is incorporated by a separate contract that does). There is no reason to believe that the parties in this case did not intend for disputes about the confidentiality agreement, which is incorporated into the employment agreement, to be subject to arbitration just like any other dispute arising out of the employment relationship.

Finally, the plaintiffs argue that the arbitration provision does not apply to conduct by Rooke and Rogness after they were no longer employed by Indiezone. But the plaintiffs provide no authority for the proposition – and the Court is aware of none – that an agreement to arbitrate terminates at the end of an employment relationship. It is common for disputes to arise between companies and their former employees that stem from the employment relationship, and without limiting language in the arbitration provision itself, it would make little sense to presume the parties intended for those disputes to be litigated in the courts. *See, e.g., Nacio Sys. v. Gottlieb*, 2007 WL 3171271, at *9 (N.D. Cal. Oct. 26, 2007) (holding that "any claims arising out of or relating to the employment relationship . . . are still required to be arbitrated, per the arbitration clause in the employment agreement," even though the defendants were no longer employees).

Accordingly, the motion to compel arbitration of Indiezone's claims against Rooke and Rogness is granted.

Motion to Stay the Litigation Pending Arbitration

Indiezone's claims against the remaining defendants all depend on whether Rooke and Rogness stole Indiezone's intellectual property – an issue to be decided in arbitration. Accordingly, judicial economy, efficiency, and the potential for inconsistent findings all weigh in favor of staying the case against the remaining defendants. *See* 9 U.S.C. § 3; *Swift v. Zynga Game Network, Inc.*, 805 F.Supp.2d 904, 917 (N.D. Cal. 2011). The only exception is the defendants' pending motion for sanctions based on the plaintiffs' apparent attempt to add a sham plaintiff for the purpose of avoiding arbitration. With the exception of the proceedings relating to that motion, *see* Docket No. 104, the action is stayed pending resolution of the arbitration involving Indiezone, Rooke, and Rogness.

IT IS SO ORDERED.

Dated: June 17, 2014

s/_____
VINCE CHHABRIA
United States District Judge

APPENDIX G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 13-cv-04280-VC

[Filed June 6, 2014]

INDIEZONE, INC., et al., Plaintiffs,	)
v.	)
TODD ROOKE, et al., Defendants.	)

ORDER SETTING EVIDENTIARY HEARING

Re: Docket No. 104

An evidentiary hearing is ordered on the defendants' motion for sanctions for **August 6, 2014 at 10 a.m.** The CEO for Indiezone and EoBuy, Conor Fennelly, is ordered to appear personally to take the stand for examination and cross-examination. The parties may call additional witnesses as they deem necessary. If the parties wish to call any additional witnesses, they must disclose those witnesses to each other and to the Court no later than **July 17, 2014**, with a short description of why the witness is being called. The parties must also file exhibit lists, and exchange exhibits, by **July 17, 2014**. The lists may be filed separately, and they should include a short

description of the exhibit and its relevance. Any objections to the other side's exhibits shall be filed by **July 31, 2014**. The parties shall submit an exhibit binder to the Court by **July 31, 2014**, in the format required by the Court's standing civil pretrial order (except that exhibits may be listed as being submitted by the plaintiffs or the defendants, as opposed to being labeled as joint exhibits).

IT IS SO ORDERED.

Dated: June 6, 2014

s/_____
VINCE CHHABRIA
United States District Judge

APPENDIX H

ECF No. 150-1

From: Harry.Lester@djei.ie
To: Keiko Sugisaka
Cc: Nora.Rice@djei.ie; helen.dixon@djei.ie; ita.broe@djei.ie
Subject: In regards to U.S. lawsuit request (Indiezone and eoBuy v. Rooke et al.)
Date: Thursday, September 18, 2014 11:21:13 AM
Importance: High

Mr Sugisaka,

In relation to your email correspondence sent to the Registrar Ms Helen Dixon yesterday evening on the above mentioned matter, please see below a clarificatory note that I have just issued to Mr Dollinger in respect of the information previously supplied to him by one of our junior clerical staff Conar Kennedy. As set out below this matter should have been dealt with by a more senior member of staff here and the note below clarifies previous information supplied by Mr Kennedy.

Regards,

Harry Lester
Assistant Registrar
Companies Registration Office
Parnell House
14 Parnell Square
Dublin 1

Direct Dial : 01 804 5319
E-mail: harry.lester@djei.ie

----- Forwarded by Harry Lester/entemp on 18/09/2014 17:13 -----

From: Harry Lester/entemp
To: DRDLinxs@aol.com,
Cc: Nora Rice/entemp@entemp, Helen Dixon/entemp@Entemp, Ita Broe/entemp@ENTEMP
Date: 18/09/2014 17:12
Subject: Emergency request for Information: Company Number 459923, EOBUY LICENCING LIMITED

Mr. Douglas R. Dollinger

18th September 2014

Re: Your Emergency request for Information, sent to CRO Information Unit, on 10th September 2014 and 16th September 2014, replied to by CRO Information Unit on 16th September 2014, re Company Number 459923, EOBUY LICENCING LIMITED, in respect of which a change of name from Laraghcon Chauffeur Drive Limited was registered by CRO on 13th March 2014 on foot of filings received by CRO on 6th February 2014 with an effective date of 15th July 2014 (date of incorporation)

Dear Sir,

Your recent email exchanges with CRO Information Unit have today come to the information of the Registrar of Companies, Helen Dixon.

We further understand that an email sent by a member of our Information Unit staff on 16th September 2014 has already been submitted by you to a U.S. court by way of evidence on behalf of you/your clients.

I wish to clarify that the CRO Information Unit is a general information unit which deals with a high volume of correspondence concerning a large variety of matters, with answers being supplied in general terms concerning the work of this Office. This unit is mainly staffed by clerical officers (junior grade staff), including Conar Kennedy.

In the instant case, your queries ought to have been referred to a more senior member of CRO staff, such as to the Assistant Registrar of Companies or to the Registrar, Helen Dixon.

I now write to clarify the position, as our concern is that a misleading impression may have been created by incomplete responses supplied by Mr. Kennedy to certain of the specific queries raised by you to him in your email dated 16th September last.

CRO is, pursuant to the Irish Companies Acts 1963-2013, a repository of information that has been submitted to it by or on behalf of companies on statutory forms. CRO has neither the authority nor the capacity to verify the content of those statutory forms. The onus is on a company to submit to CRO accurate information reflecting the contents of its own internal statutory registers. It is a criminal offence pursuant to section 242 Companies Act 1990 knowingly or recklessly to notify false information to CRO on statutory forms, which offence is prosecutable summarily by the Office of the Director of Corporate

Enforcement. Information is also required by the Companies Acts to be notified to CRO by companies on a timely basis. However, if a company files a statutory notification out of time, CRO does not as a matter of general policy refuse to place the notification on the company's record for being late-filed, on the basis that it is desirable that the CRO record would match the factual position and if CRO were to refuse to accept a late notification, the CRO record would then be out-of-step with the factual position.

While the public generally, and business in particular, place substantial reliance on the contents of the CRO register as to directorships and shareholdings of companies, it should be noted that the information that is held by CRO in this regard is only as reliable and as accurate as the information which has been provided to CRO by or on behalf of the company concerned on the statutory forms. The CRO register is not determinative as to the identity of the directors or shareholders of a company or does not confer validity on the statutory notifications which have been made to this Office by companies. The question of whether an individual is a director or shareholder of a company is, ultimately, a matter of fact. If a company does not keep the CRO register up-to-date with regard to its officers or members or if inaccurate information as to company officers or members is supplied to CRO on statutory forms by or on behalf of a company, the CRO register will in those cases not reflect the factual position.

CRO's task is to receive statutory filings in relation to companies and to register them. The Office operates on the good faith basis, with registration of statutory forms following as a matter of course where the form is

fully completed, has been signed on behalf of the company and certified as being correct by a current officer of the company and the information notified on the statutory form is internally consistent. This is systematic registration. A registered submission cannot be administratively removed from the CRO register post-registration. A High Court order can direct rectification of the register in appropriate cases.

In the instant case, and in the light of the email exchange between yourself and Mr. Kennedy. we have today reviewed the filings made and are satisfied that there is prima facie evidence that certain filings made in respect of Co. No. 459923 in February 2014 (for instance, Form B10, notice of change of company officer, Submission No. 9058102) which were systematically registered could have been queried on the basis of failing to correspond with previously registered filings of the company, namely the officer and member information supplied on the annual returns made by the company between 2009 and 2013, inclusive.

Your first query to Mr. Kennedy was "**Whether in 2008 and again in 2014, if a filing applicant made a request for a name change to the CRO and the name change was rejected, the application and rejection would appear on the CRO's public website.**" Mr. Kennedy correctly replied that no application for change of name was received in respect of Co. No. 459923 by the CRO at any time until such application was received by CRO in February 2014, which application stated that the special resolution to change the name had been passed by the company on 15th July 2008. Under section 24 Companies Act 1963,

a change of name takes effect only with the approval of the Registrar of Companies signified in writing. So where a company resolved to change its name but omitted to file the special resolution with this Office, no name change would take effect. From inspection of our internal CRO record, no application to change the name of Co. No. 459923 was filed with CRO prior to February 2014. For completeness, Mr. Kennedy should have gone on to state in his reply that if an application to change the name of Co. No. 45993 had been received and rejected by CRO at any time prior to 2014, that rejected application would appear in CRO administrative records in respect of the company. It would not appear on the company record that is available to the world at large via the CRO website search facility, as rejected applications are not included on that record, but it would be apparent to CRO from its own internal record in relation to the company. For that reason, we can confirm that the only application to change the name of Co. No. 459923 was filed with this Office in February 2014.

Your second query asked whether "**if a person or entity were to receive shares in the future by contract at later date as granted by corporate resolution would this fact be required to be disclosed in a filing with the CRO of the contract**". Mr. Kennedy replied that the B1 annual return includes a list of current members and any person who held shares during the period covered by the annual return. If, however, a company were to pass a special resolution dealing with its intention to allot shares in the future to a named person or entity, that resolution would be required to be filed with CRO by section 143 Companies Act 1963 within 15 days after

its passing. It is not clear to us however how this query is relevant to Co. No. 459923 as the only allotment of shares since July 2008 up to date were the 100 ordinary shares that were subscribed for on incorporation. Each of the company's annual returns filed and registered between 2009 and 2013 shows the sole registered shareholder as Ciaran Byrne of 134 Laraghcon, Lucan, Co. Dublin with a holding of 100 ordinary shares. For instance, as at 15 January 2013, the company notified CRO that Mr. Byrne was its sole shareholder, owning 100 ordinary shares. The most recent annual return filed by the company, covering the period from 16 January 2013 to 15 January 2014, notified CRO that on 15 July 2008 (i.e. outside the period covered by the return and in conflict with the shareholder information notified by the company in its B1 annual returns since 2009), Ciaran Byrne had transferred his 100 ordinary shares in the company to one Conor Fennelly of 4, Parkview, Portlaoise, Co. Laois. This notification is of a share transfer, not of a fresh share allotment by the company.

Query 3 was "**were Forms G1 and G2 notifying the CRO of a past corporate resolution providing Amended Memorandum and Articles of Association dated March 11 2014 correct in the filers notifying the CRO of a name changed where the Corporate Resolution was dated July 2014. … The issue is only whether the applicant did anything wrong by the filing in asking for an effective date when he used the forms assigned for this task in 2014 including Form G1Q**" Mr. Kennedy's response that CRO had no problem with the effective date being in the past was based on the CRO's policy of accepting for registration statutory filings that

are received outside the statutory filing period – CRO does not generally reject statutory filings where the document ought to have been delivered to CRO within a specified period but was not. For instance, a Form G1 (special resolution) is meant to be delivered to CRO within 15 days of its passing but CRO takes in special resolutions that are delivered by companies beyond the 15 days. Similarly, a Form B10 (notice of change of directors or secretary) is required to be filed with CRO within 14 days from any change in company officers but again CRO accepts these filings from companies outside the 14 day period. Mr Kennedy's reply ought to have gone on to state that CRO is not in a position to say whether the Forms G1, G2 and G1Q the subject matter of the query were correctly filed with the Office, as CRO is not on notice or aware whether the company in fact passed the resolutions including the resolution to adopt an amended M&A or to change the name of the company on the dates notified on the statutory forms as the date on which these events took place. If the company did pass the resolutions in question on the dates inserted on the forms, namely July 2008, then those filings are correct. If however, the company did not pass those resolutions in July 2008, then the filings are incorrect and the issue arises as to whether there has been breach of section 242 Companies Act 1963 (offence of knowingly or recklessly supplying information false in a material particular in purported compliance with any provision of the Companies Acts) which offence is a matter for the Office of the Director of Corporate Enforcement to deal with. It is important to note however that CRO cannot supply an answer to your query as to whether the statutory filings were factually correct or whether the persons who completed

and signed the forms and certified them as correct did anything wrong.

No issue arises in relation to Mr. Kennedy's response to Question 4 – "**Does the CRO certify documents which may appear on the CRO's website?**" If a person wishes to obtain a certified copy of a document that was filed with CRO, that is possible - our legislation provides that any person may require a certificate of the incorporation of any company or a copy or extract of any other document or part of any other document to be certified by the registrar, on payment for the certificate, certified copy or extract of such fees as the Minister may fix (section 370 (1)(b) Companies Act 1963). It is important to note that certification ought not to be equated with verification. The certification is that the document is a true copy of a document that was filed with the CRO and is not an assurance by this Office as to the factual accuracy of the content of that submission. As previously stated, if inaccurate information is supplied to CRO on statutory forms, the CRO record will contain this inaccurate information and the fact that a certified copy of such statutory form is supplied by this Office does not render the content accurate.

Query 5 was "**Are the filing with the CRO correct relative to eoBuy Licensing Limited?**" – to which Mr. Kennedy's reply was that all filings were "up to date" and he referred to an attached company printout, being a summary of the company record held by CRO and all statutory filings that had been received since date of incorporation. CRO is not however in a position to say whether the filings which have been made in

respect of the company are correct (i.e. factually accurate) and Mr. Kennedy did not say that they were.

Re Questions 6 and 7, CRO is not on notice of events that may trigger a requirement on the part of a company to make a statutory filings, other than the requirement to file an annual return which is by reference to an Annual Return Date in every year which is fixed by statute by reference to a company's date of incorporation - in the case of the company, this is 15th January annually and the return is meant to be filed within 28 days of that date. So other than in respect of the annual return, CRO is not in a position to state what documents were required to be filed with CRO since the company's date of incorporation as that depends on actions of the members of the company and of its officers which are not within the knowledge of CRO. In terms of the annual return, the company filed returns between 2009 and 2014, so it is up to date in terms of that statutory filing requirement. CRO is accordingly not in a position to state that the company has "always been compliant in its filings from date of incorporation 15/07/20007 to present 16/09/2014" as this is something that is beyond our knowledge.

I trust that the foregoing has clarified the matter more fully for you. Given that you submitted the email exchange with Mr. Kennedy to a US court by way of evidence in certain proceedings, we would be grateful if you would now submit for completeness the additional relevant material above.

Yours faithfully,

_____

Harry Lester
Assistant Registrar
Companies Registration Office
Parnell House
14 Parnell Square
Dublin 1
Direct Dial : 01 804 5319
E-mail: harry.lester@djei.ie

APPENDIX I

ECF No. 150-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Case No: CV 13-04280 VC/EDL

[Filed June 5, 2015]

Indiezone. Inc., a Delaware corporation, and EoBuy, Limited an Irish private limited company,
Plaintiffs,

vs.

Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, Holly Oliver and U.S. Bank, collectively the *RICO Defendants*;

Jingit LLC, Jingit Holdings, LLC, Jingit Financial, Services LLC., Music.Me, LLC., Tony Abena, John E. Fleming, Dan Frawley, Dave Moorehouse II, Chris Ohlsen, Justin James, Shannon Davis, Chris Karls in their capacities as officers, agents and/or employees of Jingit LLC, *Defendants in Negligence, and Aiding/Abetting*;

Wal-Mart, General Electric, Target, DOE(s) and ROE(s) 1 through 10; *Defendants in*

Negligence Secondary-Vicarious Infringement,)
Defendants.)
_____)

DECLARATION OF BRIAN WALKER IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION REQUESTING RECONSIDERATION PURSUANT TO FED. R. CIV. P. 59(E)

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ATTORNEYS FOR DEFENDANTS JINGIT LLC, JINGIT HOLDINGS, LLC, JINGIT FINANCIAL SERVICES, LLC, TODD ROOKE, JOE ROGNESS, SAM ASHKAR, PHIL HAZEL, HOLLY OLIVER, SHANNON DAVIS, JUSTIN JAMES, CHRIS

OHLSEN, DAN FRAWLEY, DAVE MOOREHOUSE, II, TONY ABENA, CHRIS KARLS, JOHN E. FLEMING, AND MUSIC.ME, LLC

I, Brian Walker, declare under penalty of perjury as follows:

1. I am a Barrister-At-Law practicing in Dublin, Ireland. I attended the Honorable Society of King's Inns in Ireland and was called to the Irish Bar in 1994. I have practiced as an Irish barrister since that time, specialising in Irish company and insolvency law. Prior to 1994, I was employed with the accounting firm PricewaterhouseCoopers and KPMG as a consultant company secretary specialising in Irish company law and corporate governance. I have also been on the Panel of Mediators since 2005 and am regularly selected to act as an independent mediator in Ireland, Europe and other locations worldwide.

2. I was retained by the attorneys for the Defendants in this lawsuit to investigate the legal status, history and filings with the Irish Companies Registration Office (CRO) for EoBuy Limited, EoBuy Ventures Limited, EoBuy Licensing Limited and "EoBuy," opine on whether a dissolved Irish company can bring a legal action under Irish law, explain the corporate filing requirements for the CRO and explain Irish corporation law, including but not limited to the standards under the Irish Companies Act and amending legislation. To this end, I have submitted a number of declarations in this matter (ECF 30, 61 and 95) and also testified in-person at an evidentiary hearing on August 6, 2014.

3. I have also been furnished with a copy of the Declaration of Douglas R. Dollinger for an Order Granting Reconsideration from Imposed Sanctions Pursuant to 18 U.S.C. § 1927 and the Court's Inherent Powers (ECF 149-1), the Exhibit C to that Declaration (ECF 149-4) containing e-mail communications between attorney Douglas Dollinger and Conar Kennedy of the Information Unit of the CRO, and a September 18, 2014 e-mail from Assistant Registrar Harry Lester of the CRO to attorney Keiko Sugisaka, which forwards a September 18, 2104, e-mail from Mr. Lester to Mr. Dollinger.

4. I understand from Mr. Dollinger's Declaration that I am being accused of falsely testifying before this Court, which is an inflammatory and completely unsupported accusation, I am in agreement with the answers and information provided by Mr. Lester in his September 18, 2014 e-mail to Mr. Dollinger and wish to address only one point of my previous testimony. With respect to Mr. Dollinger's first query to the CRO as to whether an application and rejection of a name change for a company would appear on the CRO's public website, Mr. Kennedy and Mr. Lester's response was the first I have learned from the CRO that such information would not appear on the company's list of submissions available on the CRO's public website. In my experience, and upon specific inquiry to the CRO in preparation of this declaration, the fact of a rejected name change application for a company is readily available to the public from the CRO's records, However, I have no reason to doubt the accuracy of Mr. Kennedy and Mr. Lester's representations as to Question I that this information would not be made available via the CRO's website. Therefore, my

testimony on August 6, 2014, (ECF 140-1 at 37-38) should be clarified to reflect that a name change request rejected by the CRO would still appear in the CRO's records available to the public, but not on the list of submissions appearing on the CRO's publicly available website. Regardless, it appears from both Mr. Kennedy and Mr. Lester's responses to Mr. Dollinger that the CRO has confirmed that it did not receive any name change request for company number 459923 until 18 February 2014 when the name of this company was changed to "eoBuy Licencing Limited."

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

Dated: September 24, 2014

/s/
Brian Walker ACI. ARB

Barrister-At-Law
The Law Library
The Four Courts
Dublin 7

APPENDIX J

ECF No. 166-4

Bill Holohan

From: Harry.Lester@djei.ie
Sent: 17 July 2015 16:34
To: Bill Holohan
Subject: RE: EoBuy Licensing Ltd - (in respect of which a an application for change of name had been made February 2014 to change the then name Laraghcon Chauffeur Drive Limited to EoBuy Ventures Ltd)

Dear Mr Holohan,

From reviewing history data tables, our IT unit was able to confirm that Laraghcon Chauffeur Drive Limited made an application for a change of name to EoBuy Venture Limited in February 2014.

CRO does not keep copies of system generated letters that are issued upon returning documents. These letters can be viewed by CRO subsequently but the data that is pulled into them would reflect the current status of the company (including company name), which may not reflect the data that would have been pulled into the letter at the time it was issued.

I hope that this answers your query.

Regards,

Harry Lester
Assistant Registrar
Companies Registration Office
Parnell House
14 Parnell Square
Dublin 1
Direct Dial : 01 804 5319
E-mail: harry.lester@djei.ie

From: Bill Holohan <bill@holohanlaw.ie>
To: "Harry.Lester@djei.ie" <Harry.Lester@djei.ie>
Date: 17/07/2015 16:21
Subject: RE: EoBuy Licensing Ltd - (in respect of which a an application for change of name had been made February 2014 to change the then name Laraghcon Chauffeur Drive Limited to EoBuy Ventures Ltd)

Dear Mr Lester,

I refer to our telephone conversation at 12:44 hours today, when you confirmed that the IT personnel of the CRO had been able to determine, by interrogating the database and or meta data in your computer records, but following the change of name of the company which occurred in March 2014, any reproduction of the letter issued by the CRO on 18 February 2014, would draw on the field displaying "Name" for the company, which following the name change, would display the current name. You confirmed to me that the antipersonnel had confirmed to you that by interrogating the original meta data/database, you are able to confirm that the original letter issued on 18 February 2014 Company

Setup Ltd, in fact referred to a refusal of a change of name to EoBuy Ventures Ltd.

I would be greatly obliged if you would formally acknowledge this email and confirm that the foregoing is a correct statement of our conversation.

I await hearing from you as soon as ever possible.

With best regards and again much thanks for your great assistance today and during the course of the week,

Bill Holohan

From: Bill Holohan
Sent: 18 July 2015 18:39
To: Harry.Lester@djei.ie
Subject: RE: EoBuy Licensing Ltd - (in respect of which a an application for change of name had been made February 2014 to change the then name Laraghcon Chauffeur Drive Limited to EoBuy Ventures Ltd)

Dear. Mr Lester

On my own behalf and on behalf of my client and his US lawyer Mr Douglas Dollinger, may I again express my sincere thanks for all your help and assistance yesterday.

I note that at the end of the meeting was agreed that you would research 3 matters.

The 1st was to confirm the identity from the CORE data, the identity of the presenter of each document filed with the CRO, in order to verify that all

documents submitted up to and including 2014, by way of electronic submission, were from Company Started Limited.

The 2nd was to confirm whether on a subsequent electronic resubmission of my document, the CRO the resubmitted electronic document would overwrite and replace the original electronic document submitted, and was to confirm whether notwithstanding the overwriting of the publicly accessible document, whether any electronic trace of the original submission could be located. This was, in particular, with a view to seeking to identity/ascertain whether there was any electronic trace of the original February 2014 application for change of name to EoBuy Ventures Limited, and any electronic trace within the CRO Computer systems of the documents submitted for that purpose.

The 3rd was to conform whether it was possible to do a search of the core metadata on the CRO computer systems to ascertain if there was any electronic trace referring to EoBuy Ventures Ltd. You later confirmed there was such a reference or trace in respect of the eletter of 18 February 2014 from the CRO to Company Setup Ltd regarding the rejection of the change of name application. I would be obliged if you would confirm whether or not, following a full search, there is any other reference or trace referring to EoBuy Ventures Ltd.

With best regards,

/s/