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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

OPEN SOURCE SECURITY, INC., and
BRADLEY SPENGLER,

Plaintiffs,

v.

BRUCE PERENS, and Does 1-50,

Defendants.

Case No. 3:17-cv-04002-LB

**DECLARATION OF MELODY
DRUMMOND HANSEN IN SUPPORT
OF DEFENDANT BRUCE PERENS'S
MOTION FOR SANCTIONS AGAINST
PLAINTIFFS' COUNSEL UNDER
SECTION 1927 AND THE COURT'S
INHERENT POWERS**

DECLARATION OF MELODY DRUMMOND HANSEN

I, Melody Drummond Hansen, declare as follows:

1. I am a partner of O’Melveny & Myers LLP (“O’Melveny”), with an office located at 2765 Sand Hill Road, Menlo Park, CA 94025. O’Melveny is counsel of record for Defendant Bruce Perens in this case. I am admitted to practice in the State of California. I submit this Declaration under Civil Local Rule 54-5 in support of Mr. Perens’s Motion for Sanctions pursuant to 28 U.S.C. Section 1927 and the Court’s inherent powers. I have personal knowledge and am informed of the facts stated herein and, if called to testify, I could and would testify to the truth of the following.

2. On September 19, 2017, minutes after Mr. Perens submitted his original Motion to Dismiss and Strike, I received an email from Plaintiffs’ Counsel Rohit Chhabra. In this email, Mr. Chhabra wrote: “Oh.. interesting. This will be a fun game to play. If you guys win, I’ll happily pay your bills. :) Game on.” A true and correct copy of this email is attached here as Exhibit 1.

3. Over the course of the litigation, Plaintiffs’ counsel apparently did treat the litigation as a game to be won. For example, hours after agreeing to extend the deadline for Mr. Perens to file a second motion to dismiss and anti-SLAPP motion to strike to address 12 pages of new allegations and theories in Plaintiffs’ First Amended Complaint, Plaintiffs filed a motion for partial summary judgment. (ECF No. 24.) Plaintiffs noticed that motion to be heard on November 16, before it would be possible for Mr. Perens’s motions to be heard, considering the October 31 agreed response date for Mr. Perens to respond to the First Amended Complaint. This would also require Mr. Perens to oppose Plaintiffs’ motion for summary judgment before he filed his motions to dismiss and strike, and over the same time period.

4. Mr. Perens’s counsel requested that Plaintiffs agree to defer briefing on Plaintiffs’ partial summary judgment motion until after Mr. Perens second motion to dismiss and strike could be heard, because it would serve judicial economy for the Court to decide first whether Plaintiffs could proceed on their claims; a partial summary judgment by definition could not resolve the case; in any case, Plaintiffs’ motion was premature and not likely to be successful; and

1 proceeding in the way Plaintiffs suggested would lead to unnecessary fees. Plaintiffs' counsel
2 refused, contending that it would instead be in the interest of judicial economy to hear the motion
3 for partial summary judgment, and that Plaintiffs' summary judgment motion could render Mr.
4 Perens's anti-SLAPP motion frivolous or premature based on alleged "wrongdoing" by Mr.
5 Perens. Ultimately, Mr. Perens was forced to move for a continuance on the summary judgment
6 motion, after which the best agreement we could reach was a hearing on both Plaintiffs' motion
7 and Mr. Perens's motions at the same time, which led to additional fees based on defense
8 counsel's simultaneous briefing and preparation on summary judgment and a motion to dismiss
9 and strike.

10 5. With a new complaint to address, as well as a motion for partial summary
11 judgment, the team added first-year associates Eric Ormsby and Marissa Rhoades to assist with
12 the matter.

13 6. Plaintiffs' counsel also led to additional work for Mr. Perens's counsel by
14 misconstruing Mr. Perens's statements. For example, Plaintiffs' Reply In Support of Summary
15 Judgment misconstrued statements made by Mr. Perens in a July 9, 2017 comment on the Slashdot
16 website and in his October 31, 2017 Declaration filed in support of his motion to dismiss. The Reply
17 speculated that Mr. Perens must have reviewed the Grsecurity Agreement before posting his July 9
18 Slashdot comment and necessarily opined that the Agreement did not violate the GPL, concocting an
19 alleged "admission" that Mr. Perens's opinions in his July 10, 2017 blog post were false. *See* Reply
20 at 3–5 (ECF No. 37.). This forced Mr. Perens to review his files to demonstrate that he did not see a
21 copy of the Agreement until after his July 9 post. *See* ECF No. 40. I sent a copy of these emails to
22 Mr. Chhabra on November 18, 2017, requesting a stipulation to file a Supplemental Declaration and
23 Surreply to correct the record. Mr. Chhabra opposed the supplemental declaration. Moreover, Mr.
24 Chhabra asserted that Mr. Perens had committed "perjury" by requesting to correct his October 31
25 statement to reflect that he had confirmed from his email records that he reviewed the Grsecurity
26 agreement the morning of July 10, rather than in the evening of July 9, as he previously recalled.
27 Plaintiffs then continued to proffer the same "admission" arguments, including in Plaintiffs'
28 Opposition to the Motion to Dismiss submitted on November 21, 2017. (ECF No. 38.)

Exhibit 1

From: Rohit Chhabra <rohit@thelawfirm.io>
Sent: Tuesday, September 19, 2017 12:01 AM
To: Drummond Hansen, Melody
Subject: RE: OSS / Perens -- CMC

Oh.. interesting. This will be a fun game to play. If you guys win, I'll happily pay your bills. :) Game on.

Regards,
Rohit

On Sep 18, 2017 11:56 AM, "Drummond Hansen, Melody" <mdrummondhansen@omm.com
<mailto:mdrummondhansen@omm.com> > wrote:

Thank you so much.

Melody

O'Melveny

Melody Drummond Hansen

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<<https://twitter.com/omelvenymyers>> Twitter | <<https://www.omm.com/professionals/melody-drummond-hansen/>>
Bio

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From: Rohit Chhabra [mailto:rohit@thelawfirm.io <mailto:rohit@thelawfirm.io>]
Sent: Monday, September 18, 2017 11:50 AM
To: Drummond Hansen, Melody
Subject: Re: OSS / Perens -- CMC

Agreed. No problem. :)

ROHIT CHHABRA

Attorney at Law | Admitted in California and New York CHHABRA LAW FIRM, PC Perfection. Honesty. Loyalty. ®
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On 9/18/2017 11:29 AM, Drummond Hansen, Melody wrote:

Hello, Mr. Chhabra--

I will be traveling (for previously scheduled travel) on the date currently scheduled for the CMC -- October 19. Mr. Perens also plans to move to dismiss and strike the complaint.

We would like to request that the court reschedule the CMC to a later date, and we think it makes sense to allow the court an opportunity to rule on Mr. Perens's motion before the parties appear at the CMC to discuss how the case should proceed.

Please let us know if OSS is agreeable to moving the CMC, and if so, whether November 16 would work for you as a new date for the CMC.

I also am available to discuss by phone.

Thank you!

Melody

O'Melveny

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Twitter <<https://twitter.com/omelvenymyers>> | <<https://www.omm.com/professionals/melody-drummond-hansen/>>
Bio

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