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Bruce Perens

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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 OPEN SOURCE SECURITY, INC., and  
16 BRADLEY SPENGLER,

17 Plaintiffs,

18 v.

19 BRUCE PERENS, and Does 1-50,

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

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

1 **DECLARATION OF MELODY DRUMMOND HANSEN**

2 I, Melody Drummond Hansen, declare as follows:

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

10 2. Concurrently with Plaintiffs’ submission of an amended complaint, Plaintiffs also  
11 submitted an opposition to Mr. Perens’s initial motion to dismiss and strike, but relied on  
12 allegations and support stated in the First Amended Complaint. (ECF No. 20). Because of the  
13 procedural irregularity in such a decision, Mr. Perens’s counsel was forced to expend hours of  
14 research in determining what the correct procedural approach should be. After locating Ninth  
15 Circuit case law, Mr. Perens confirmed that an amended complaint supersedes all prior  
16 complaints as a matter of law, and federal courts do not make an exception to that rule for anti-  
17 SLAPP motions. Despite offering Plaintiffs’ counsel with this clear precedent, Plaintiffs’ counsel  
18 engaged us in an extended debate about the procedural effect of the amended complaint based on  
19 a misreading of the cases he cited, to which Mr. Perens’s counsel was forced to devote more time  
20 negotiating.

21 3. Following Plaintiffs’ submission of the motion for partial summary judgment  
22 (ECF No. 24), Cara Gagliano and I exchanged a series of emails with Mr. Chhabra, requesting a  
23 stay on the briefing. During this exchange, we informed Plaintiffs’ counsel of the procedural  
24 irregularity of the motion, and discussed the benefits of allowing the Court to consider a  
25 responsive pleading before ruling on Plaintiffs’ motion for partial summary judgment, including  
26 that consideration of Mr. Perens’s motion first could avoid the need to consider the summary  
27 judgment motion at all, whereas the motion for summary judgment would still require the Court  
28 to consider the remainder of the anti-SLAPP motion. Therefore, a stay would be in both parties’

1 interests, as briefing and arguing the motion for summary judgment would expose Plaintiffs to  
2 potential additional liability to pay Mr. Perens's fees in opposing the frivolous and premature  
3 summary judgment motion. Despite these warnings, Mr. Chhabra refused to stay the motion, and  
4 insisted on briefing the partial summary judgment motion before Mr. Perens' anti-SLAPP motion  
5 could be decided.

6 4. On November 9, 2017, I participated in a joint case management call with  
7 Plaintiffs' counsel. During this call, I reminded Mr. Chhabra that the entire lawsuit would be  
8 subject to the mandatory fee-shifting statute, and advised him of the rapidly increasing costs of  
9 the litigation, which had entered the six figures.

10 5. Following the December Order Granting Mr. Perens's Motion to Dismiss, Mr.  
11 Perens attempted to settle the case, warning Plaintiffs' counsel that continued pursuit of his  
12 frivolous claims could result in additional fees, "fees-on-fees" and in sanctions. Indeed, Mr.  
13 Perens requested to meet and confer with Plaintiffs' counsel not once, but twice, regarding the  
14 possibility of sanctions: On January 8, I inquired whether Plaintiffs intended to file an amended  
15 complaint, noting that any attempt to pursue their baseless claims would provide grounds for  
16 sanctions under Federal Rule of Civil Procedure Rule 11; I also noted that Plaintiffs' counsel's  
17 pattern of unnecessarily multiplying the proceedings justified sanctions under §1927 and the  
18 Court's inherent powers. A true and correct copy of this email is attached here as Exhibit 1.  
19 Plaintiffs refused to discuss the possibility of settlement, and failed to inform Mr. Perens what  
20 their intentions were regarding an amended complaint. On February 5, 2018, I sent Plaintiffs'  
21 counsel another email, informing him that we intended to bring a motion for fees pursuant to  
22 §1927, and attempting to discuss the fees we intended to seek and identify and potentially narrow  
23 disputes in the motions, as contemplated under Civil Local Rule 54-5. A true and correct copy of  
24 this email is attached here as Exhibit 2.

25 6. Mr. Perens's counsel's contemplation of moving for sanctions preceded Plaintiffs'  
26 counsel's notice of an intent to appeal. Mr. Perens stated so in the Joint Case Management  
27 Statement, filed with the Court on November 22, 2017. (ECF No. 39 at 11). After the Hearing  
28 on December 14, wherein Mr. Chhabra stated that he filed the motion for summary judgment

1 because he “honestly just wanted Mr. Perens’s declarations,” Mr. Perens’s counsel began  
2 researching the requisite standards in anticipation of drafting the motion for sanctions. Because  
3 Plaintiffs’ counsel did not indicate whether he would be amending the complaint a second time,  
4 which could also have led to sanctionable fees under Rule 11.

5 7. Concurrently with the submission of this motion, I also submitted a Declaration In  
6 Support of Bruce Perens’s Reply in Support of his Motion for Mandatory Fees and Costs Under  
7 California’s Anti-SLAPP Law. I refer to that Declaration and Exhibits as describing our fees and  
8 hours in detail, and supporting information for why our fees are reasonable. For the sake of  
9 economy, I have not included that information here, but would be happy to supply a further  
10 separate declaration should the Court prefer.

11 I declare under penalty of perjury under the laws of the United States that the foregoing is  
12 true and correct, and that this declaration was executed this 22nd day of March 2018 in San  
13 Francisco, California.

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15 By: /s/ Melody Drummond Hansen  
16 Melody Drummond Hansen  
17 Of O’Melveny & Myers LLP  
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