

1 MELODY DRUMMOND HANSEN (S.B. #278786)  
mdrummondhansen@omm.com  
2 HEATHER J. MEEKER (S.B. #172148)  
hmeeker@omm.com  
3 O'MELVENY & MYERS LLP  
2765 Sand Hill Road  
4 Menlo Park, California 94025-7019  
Telephone: +1 650 473 2600  
5 Facsimile: +1 650 473 2601

6 CARA L. GAGLIANO (S.B. #308639)  
cgagliano@omm.com  
7 Two Embarcadero Center  
28th Floor  
8 San Francisco, California 94111-3823  
Telephone: +1 415 984 8700  
9 Facsimile: +1 415 984 8701

10 Attorneys for Defendant  
Bruce Perens

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**  
15

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

17 Plaintiffs,

18 v.

19 BRUCE PERENS, and Does 1-50,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

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

**DEFENDANT'S REPLY IN SUPPORT  
OF MOTION FOR SANCTIONS  
AGAINST PLAINTIFFS' COUNSEL**

Hearing Date: April 5, 2018

Time: 9:30 a.m.

Location: Courtroom C, 15th Floor

Judge: Hon. Laurel Beeler

1 Mr. Perens moved for sanctions because Plaintiffs' counsel bears some responsibility for  
2 the significant fees incurred in defending this case. At every stage, Plaintiffs' counsel chose to  
3 unreasonably multiply the proceedings and increase the fees incurred. In response, Plaintiffs'  
4 counsel attempts to defend each of his actions individually as if they were isolated events, relies  
5 on self-serving assurances of his good intentions, and insists that his various unnecessary filings  
6 were brought on "arguable" theories.

7 But the Court need not rely on Plaintiffs' counsel's characterization of his behavior and  
8 can instead consider counsel's conduct as a whole in unnecessarily multiplying the proceedings.  
9 Also, the Court can conclude that Plaintiffs' counsel acted intentionally and recklessly based on  
10 counsel's persistence in pursuing unnecessary pleadings and farfetched theories after Defendant's  
11 counsel alerted him to the frivolous and harassing nature of his positions and to the risk that fees  
12 could be awarded against him and his clients. Indeed, even in responding to the motions for fees  
13 and sanctions, Plaintiffs' counsel still does not seem to acknowledge or regret how his litigation  
14 tactics were vexatious and unnecessarily increased the fees incurred in this case. Instead,  
15 Plaintiffs' counsel continues to insist on unreasonable positions, such as that his motion for partial  
16 summary judgment might have fully resolved the case, and doggedly pursues his discredited  
17 theory that Mr. Perens admitted his client does not violate the GPL (a view which was  
18 unsupported and in any case could not legally support summary judgment of defamation).  
19 Throughout the case, Plaintiffs' counsel consistently chose to pursue the more expensive path in  
20 an attempt to "win," no matter how frivolous the position. And Plaintiffs' counsel has continued  
21 this pattern in responding to Mr. Perens's motions for fees and sanctions, adding more *ad*  
22 *hominem* attacks and unnecessary pleadings.

23 Mr. Perens therefore respectfully requests that Plaintiffs' counsel be held at least partially  
24 responsible for unnecessary fees incurred in defending this meritless case.

25 **I. PLAINTIFFS' COUNSEL CANNOT AVOID SANCTIONS BY ATTEMPTING TO**  
26 **ISOLATE EACH INCIDENT.**

27 Mr. Perens showed that Plaintiffs' counsel should bear some responsibility for  
28 "multiplying the proceedings unnecessarily" based on the totality of his actions. *See* Mot. for

1 Sanctions at 4, 7, ECF No. 64; *see also Vedatech, Inc. v. St. Paul Fire & Marine Ins. Co.*, No. 04-  
2 1403 VRW, 2005 WL 1513130, at \*16 (N.D. Cal. June 22, 2005), *aff'd sub nom. St. Paul Fire &*  
3 *Marine Ins. Co. v. Vedatech Int'l, Inc.*, 245 F. App'x 588 (9th Cir. 2007); *Moser v. Bret Harte*  
4 *Union High Sch. Dist.*, 366 F. Supp. 2d 944, 985 (E.D. Cal. 2005). Indeed, Section 1927 is meant  
5 to deter attorneys from vexatious tactics and to “compensate attorneys forced to endure such  
6 motions.” *Vedatech*, 2005 WL 1513130, at \*16 .

7 Here, minutes after Mr. Perens filed his initial anti-SLAPP motion, Plaintiffs’ counsel sent  
8 an email to Mr. Perens’s, stating “This will be a fun game to play” and “Game On.” Drummond  
9 Hansen Decl. ISO Sanctions Reply Ex. 1. While Plaintiffs’ counsel now objects to that message  
10 being cited to the Court (*e.g.*, Opp. to Sanctions at 2–3, ECF No. 79), Mr. Perens moves for  
11 sanctions not based on the language of that email alone but instead based on Plaintiffs’ counsel’s  
12 consistent pattern of litigating the case as if it were a game to be won—no matter how much in  
13 unnecessary fees would be incurred and despite the notice to Plaintiffs’ counsel that Mr. Perens  
14 was seeking his fees under anti-SLAPP. *See* Mot. for Sanctions at 5–9. For example, Plaintiffs’  
15 counsel filed premature and duplicative motions, relied on improper procedural maneuvers, and  
16 advanced baseless arguments and *ad hominem* attacks intended to harass Mr. Perens and his  
17 counsel. *See* Mot. for Sanctions at 7–9; *see also* Opp. to Fees at 9–12, ECF No. 78 (advancing  
18 new irrational *ad hominem* attacks). In response, Plaintiffs’ counsel ignores his pattern of  
19 behavior, instead attempting to separately defend each filing as it was an isolated incident. *See*  
20 Opp. to Sanctions at 2–7.

21 Courts, however, infer bad faith based on an attorney’s behavior as a whole and the  
22 “totality of the circumstances,” rather than individual filings alone. *See Moser*, 366 F. Supp. 2d at  
23 984–85. In *Moser*, for example, the court disregarded an attorney’s explanation that she did not  
24 act in bad faith based on the court’s observations of her pattern of behavior throughout the  
25 litigation. *Id.* at 975–85. There, the attorney filed a multitude of baseless objections,  
26 mischaracterized the facts from the record, misstated the law, engaged in “ad hominem attacks on  
27 Plaintiff,” and filed a procedurally improper response to a motion for summary judgment. *Id.* at  
28 953, 973–74. While the attorney and her firm argued that her actions were “careless or

1 inadvertent, but not in bad faith, because she did not knowingly or recklessly raise a frivolous  
2 argument or argue for the purpose of harassing her an opponent,” the court found the argument  
3 “untenable given the substantial evidence that [she] had ample notice and opportunity to correct  
4 the mistakes which were expressly identified by [opposing] counsel, yet repeatedly submitted . . .  
5 to the Court.” *Id.* at 980–81. And in *De Dios v. Int’l Realty & Invs.*, 641 F.3d 1071, 1077 (9th  
6 Cir. 2011), the Ninth Circuit affirmed sanctions under § 1927 after disregarding proffered “after-  
7 the-fact justifications” for bringing a motion to disqualify “[g]iven that there was no legal basis  
8 for the motion.”

9 As Mr. Perens has shown, the record is replete with examples that allow the Court to infer  
10 Plaintiffs’ counsel has acted in bad faith. *See, e.g.*, Mot. for Sanctions at 7–9. In response,  
11 Plaintiffs’ counsel offers little support for his arguments, instead offering various explanations for  
12 his behavior in the hope that the Court will trust him when he says he did not act in bad faith. *See*  
13 Opp. to Sanctions at 3–8. No such trust is warranted here. On numerous occasions, Mr. Perens  
14 pointed out the unreasonableness and excessiveness of Plaintiffs’ counsel’s filings. For example,  
15 Plaintiffs persisted (and still persist in) arguing the merits of their baseless admissions theory,  
16 despite lacking either factual or legal support. *See* Section III, *infra*. And two days before the  
17 hearing on Mr. Perens’s anti-SLAPP motion, he filed a supplemental brief on a decade-old,  
18 readily distinguishable case, yet suggests that Mr. Perens should have refrained from responding  
19 to his errors in order to reduce costs. Opp. to Sanctions at 7. The Court should also infer bad  
20 faith from Plaintiffs’ counsel’s repeated misstatements of law and fact, his *ad hominem* attacks on  
21 Mr. Perens and his counsel, and his repeated disregard for the Federal Rules of Civil Procedure.  
22 *See* Mot. for Sanctions 7–9; Section III, *infra*. As Mr. Perens has shown, the Court need not  
23 accept his “after-the-fact justifications,” as Plaintiffs’ counsel’s conduct as a whole belies his  
24 statements that he did not act in bad faith. *See Moser*, 366 F. Supp. 2d at 985; *De Dios*, 641 F.3d  
25 at 1077.

26 **II. PLAINTIFFS’ COUNSEL’S ACTIONS ARE SANCTIONABLE DESPITE HIS**  
27 **PROFESSIONS OF GOOD INTENTIONS AND “ARGUABLE” LEGAL**  
28 **THEORIES.**

Plaintiffs’ counsel attempts to avoid sanctions by arguing that his intentions were good,

1 his motions were filed “in good faith, under . . . arguable legal theor[ies],” and his actions can be  
2 reduced to a mere matter of “disagreement.” Opp. to Sanctions at 4, 7–8. But the pattern here  
3 demonstrates that Plaintiffs’ counsel proceeded despite numerous warnings that his behavior did  
4 not comply with ordinary standards of care and risked subjecting his clients to increasingly large  
5 fees under the anti-SLAPP statute.

6 Plaintiffs’ counsel incorrectly asserts that Mr. Perens’s motion applies the wrong standard,  
7 arguing that counsel merely “should have known” his arguments lacked merit. *See, e.g.,* Opp. to  
8 Sanctions at 1. But the behaviors identified in Mr. Perens’s motion fall squarely within the  
9 Northern District’s standard for recklessness under § 1927, which is characterized by a “departure  
10 from ordinary standards of care that disregards a known or obvious risk.” [RMD1]H.P.D.  
11 *Consolidation, Inc. v. Pina*, No. 15-CV-05309-EMC, 2017 WL 1046960, at \*3 (N.D. Cal. Mar.  
12 20, 2017) (citing *In re Girardi*, 611 F.3d 1027, 1038 n.4 (9th Cir. 2010)).

13 Plaintiffs’ counsel repeatedly chose to pursue a course that deviated from ordinary  
14 standards and to disregard known or obvious risks that Plaintiffs’ counsel’s positions were  
15 frivolous and that he would subject his clients to greater liability for fees. For example,  
16 Plaintiffs’ counsel was on notice of the fatal flaws in the Complaint at least on September 18,  
17 2017, when Mr. Perens filed an anti-SLAPP motion and motion to dismiss. *See* Mot. for  
18 Sanctions at 5, 7; First Anti-SLAPP Mot., ECF No. 11. Apparently, instead of being concerned  
19 by the core deficiencies raised, Plaintiffs’ counsel seemed to view Mr. Perens’s motions as  
20 issuing a professional “challenge.” *See* Opp. to Sanctions at 2–3. And, even if Plaintiffs’ counsel  
21 believed the Complaint had a chance to survive, he could have proceeded with care by allowing  
22 the Court to efficiently hear the parties’ dispute on the core actionability of Plaintiffs’ claims,  
23 reserving the right to amend for claims the Court found lacking. *See* Mot. for Sanctions at 5, 7.  
24 Instead, Plaintiffs filed the First Amended Complaint. *See* ECF No. 18. While it was Plaintiffs’  
25 right to file an amended complaint to fix deficiencies identified by Mr. Perens’s motion, the  
26 Amended Complaint failed to address the fatal flaws identified by Mr. Perens, and instead offered  
27  
28

1 additional unsupported factual and legal theories. *See* Mot. for Sanctions at 5–6.<sup>1</sup> Proceeding  
2 without fixing such deficiencies can support sanctions. *See, e.g., Pascual v. Wells Fargo Bank,*  
3 *N.A.*, No. 4:13-CV-02005-KAW, 2014 WL 582264, at \*7 (N.D. Cal. Feb. 13, 2014). In *Pascual*,  
4 the court imposed sanctions on an attorney who submitted an amended complaint that failed to  
5 address fatal flaws raised by a defendant in their initial motion to dismiss, and instead chose to  
6 assert frivolous arguments unsupported by law. *Id.* (citing *Edwards v. Gen. Motors Corp.*, 153  
7 F.3d 242, 246 (5th Cir. 1998) (“willful continuation of a suit known to be meritless” satisfies  
8 § 1927)).

9 But Plaintiffs’ counsel did not merely amend the complaint. He also deviated from  
10 ordinary standards by filing a procedurally irregular concurrent opposition to Mr. Perens’s  
11 motions that relied on allegations of the First Amended Complaint. *See* Opp. to First Anti-  
12 SLAPP Mot., ECF No. 20. This caused Mr. Perens’s counsel to have to research the procedural  
13 approach and to negotiate with Plaintiffs’ counsel to agree that the First Amended Complaint was  
14 operative. *See* Drummond Hansen Decl. ISO Sanctions Reply ¶ 2.

15 Then, before Mr. Perens filed his anti-SLAPP motion on the First Amended Complaint,  
16 Plaintiffs’ counsel further deviated from ordinary standards by filing a premature motion for  
17 partial summary judgment, which by definition could not resolve the case. Mot. for Sanctions at  
18 5–6; Mot. for Partial Summary Judgment, ECF No. 24. Mr. Perens’s counsel alerted Plaintiffs’  
19 counsel to the procedural irregularity of the filing, the low chance of success, its inability to  
20 resolve all claims even if successful, and the likelihood that this would unnecessarily increase  
21 fees incurred that his clients would have to reimburse if Mr. Perens’s motion succeed. Mot. for  
22 Sanctions at 6; Drummond Hansen Decl. ISO Sanctions Reply ¶ 3. In response, Plaintiffs’  
23 counsel refused to defer briefing, requiring Mr. Perens’s counsel to move for relief, then spend  
24 nearly 100 hours deciphering researching, responding to, and preparing for a hearing on a  
25 premature motion (Mot. for Sanctions at 6, ECF No. 64), which by a generous interpretation of

---

26 <sup>1</sup> While Plaintiffs’ counsel contends that he needed to amend the complaint to preserve his rights  
27 on appeal (Opp. to Sanctions at 3–4), after the Court dismissed the First Amended Complaint, the  
28 Court gave Plaintiffs leave to amend, which they did not take, but still managed to preserve their  
rights.

1 the Opposition, Plaintiffs' counsel believed was a clever tactical maneuver that could usurp Mr.  
2 Perens's procedurally proper motions to dismiss. *See* Opp. to Sanctions at 6–7. Plaintiffs'  
3 counsel unreasonably insisted on proceeding, however, despite notice that his client's motion  
4 would not achieve that goal, and Mr. Perens's counsel submits that the sanctions motion  
5 accurately reflects the hearing record where counsel acknowledged he wanted to obtain  
6 declarations from Mr. Perens. *See* Mot. for Sanctions at 6; Dec. 14, 2016 Hr'g Tr. at 6:13–14,  
7 6:21–7:4; Opp. to Sanctions at 6.

8 Pursuing such tactical maneuvers despite warnings of frivolousness supports a finding of  
9 bad faith for sanctions. In *Optyl Eyeware*, the court found an attorney had acted in bad faith  
10 when the record demonstrated he had no basis for filing a disqualification motion and his pattern  
11 of behavior indicated he had filed the motion as an improper “tactical maneuver.” *Optyl Eyewear*  
12 *Fashion Int'l Corp. v. Style Cos.*, 760 F.2d 1045, 1051 (9th Cir. 1985). And in *Vedatech*, the  
13 court found bad faith where a pro se plaintiff recklessly raised frivolous arguments about case  
14 law, despite opposing counsel warning them that their conclusions were not warranted by law.  
15 2005 WL 1513130, at \*17.

16 During counsel's Rule 26(f) conference on November 9, 2017, Mr. Perens's attorneys  
17 warned Plaintiffs' attorneys that the costs of the lawsuit had already entered six figures; and that  
18 the entirety of the lawsuit was subject to the fee-shifting provision of the anti-SLAPP suit.  
19 Drummond Hansen Decl. ISO Sanctions Reply ¶ 4. Despite this, Plaintiffs' counsel insisted on  
20 conducting discovery prior to the anti-SLAPP hearing, but failed to identify what discovery  
21 Plaintiffs needed or comply with the procedural requirements of Federal Rule of Civil Procedure  
22 56(d). Mot. for Sanctions at 7; Opp. to Second Anti-SLAPP Mot. at 9–11, ECF No. 38.

23 Following the December Order Granting Mr. Perens's Motion to Dismiss, ECF No. 53,  
24 Mr. Perens sent a message offering a potential resolution, per the Court's suggestion at the  
25 December 14 hearing. Drummond Hansen Decl. ISO Sanctions Reply ¶ 5. Mr. Perens's counsel  
26 warned Plaintiffs' counsel that continued pursuit of Plaintiffs' baseless claims would result in  
27  
28

1 increased fees, “fees on fees,” and sanctions.<sup>2</sup> *Id.* ¶ 5, Exs. 1, 2. Yet Plaintiffs’ counsel refused to  
2 even discuss the possibility of an agreement with Mr. Perens that might reduce the amount of fees  
3 owed, despite repeated urging by Mr. Perens’s counsel. *Id.*

4 Thus, not only has Mr. Perens demonstrated that Plaintiffs’ counsel should have known  
5 about the risks of his behavior, but that he also repeatedly chose to pursue his vexatious litigation  
6 tactics after being put on actual notice about the significant risks of those tactics to increase the  
7 fees his clients might ultimately owe, and the risks that his actions would be sanctionable.

### 8 **III. BAD FAITH CAN BE INFERRED FROM PLAINTIFFS’ COUNSEL’S DOGGED** 9 **PURSUIT OF FARFETCHED THEORIES AND AD HOMINEM ATTACKS.**

10 Plaintiffs’ counsel also has persisted in pursuing farfetched theories and *ad hominem*  
11 attacks against Mr. Perens and his counsel. Plaintiffs’ counsel attempts to persuade the court he  
12 acted in good faith because there was not “an absolute 100% [chance of] failure” when he filed  
13 his motions. *See, e.g.,* Opp. to Sanctions at 6. But the Court should refuse to engage in such line-  
14 drawing, as Plaintiffs’ counsel’s actions demonstrate he behaved recklessly by asserting  
15 arguments unfounded in law and fact, despite warnings from Mr. Perens’s counsel of the risks of  
16 doing so. In addition, Plaintiffs’ counsel persisted in personal, serious, and groundless,  
17 accusations of misconduct against Mr. Perens and his counsel, evincing a bad faith and reckless  
18 intent to harass Mr. Perens and “win” the litigation at any cost.

19 For example, Plaintiffs’ motion for summary judgment was grounded in a theory based on  
20 a fundamental mischaracterization of statements in Mr. Perens’s declaration. *See* Mot. for  
21 Sanctions at 8; Reply ISO Mot. for Partial Summary Judgment, ECF No. 37. As Mr. Perens

---

22 <sup>2</sup> While Plaintiffs’ counsel argues that “the record clearly indicates Section 1927 sanctions were  
23 not even considered until after Plaintiffs expressed their intent to appeal the matter [on January  
24 18]” (Opp. to Sanctions, Ex. 2 at 1, ECF No. 79-2), Plaintiffs’ counsel should know that his  
25 accusation is not true. Mr. Perens requested an award of his reasonable attorneys’ fees and costs  
26 under both the anti-SLAPP statute and specifically 28 U.S.C. § 1927 in the Joint Case  
27 Management Statement, submitted to the Court on November 22, 2017. ECF No. 39 at 11. Also,  
28 the first five entries Plaintiffs’ counsel complained (dated on January 3-4) merely refer to  
“sanctions” generally. *Id.* Despite this, Mr. Chhabra dismisses these entries as “not related to  
1927 sanctions.” Mr. Perens contemplated both Rule 11 and Section 1927 sanctions, as Mr.  
Perens’s counsel indicated in a January 8, 2018 email—before Plaintiffs’ counsel indicated  
whether he would amend the complaint, much less whether he would appeal. Drummond Hansen  
Decl. ISO Sanctions Reply ¶ 6 and Ex. 1)



1 demonstrated in his opposition to the motion for partial summary judgment, such an interpretation  
2 was implausible, given the context of the statements made. *See* ECF No. 32. Moreover, the  
3 statements were legally irrelevant and could not support a motion for partial summary judgment,  
4 as argued by Mr. Perens and acknowledged by the Court in its Order Granting Mr. Perens's  
5 motion to Dismiss. *See* ECF. Nos. 32, 53.

6 Despite Mr. Perens providing Plaintiffs with evidence of the factual inaccuracies of their  
7 argument, not only did Plaintiffs refuse to withdraw the argument, but they also persisted in  
8 pressing the same incoherent theory in their opposition to Mr. Perens's anti-SLAPP motion. *See*  
9 Mot. for Sanctions at 8, ECF No. 64; ECF No. 38. Plaintiffs' counsel then refused to permit Mr.  
10 Perens to correct a statement that he had reviewed the Grsecurity agreement in the morning of  
11 July 10, rather than in the evening of July 9 despite the misstatement having no bearing on the  
12 litigation. Mot. for Sanctions at 8, ECF No. 64; Drummond Hansen Decl. ¶ 6.; ECF No. 42.  
13 Indeed, Plaintiffs' counsel continues to insist that the motion was "based on a valid legal theory,"  
14 despite the clear lack of support both legally and factually.<sup>3</sup> Opp'n to Sanctions at 4-7, ECF No.  
15 79.

16 Plaintiffs' counsel's behavior in the course of responding to Mr. Perens's motions for fees  
17 and sanctions further supports a finding of bad faith. In response to a twenty-two minute delay in  
18 filing, Plaintiff filed an ex parte application to deem the motion for sanctions improper. ECF No.  
19 68. In the Reply in support of this application, Mr. Chhabra made several misstatements of fact  
20 and of law. *See* ECF No. 74. For example, Mr. Chhabra made the following statement to the  
21 Court: "At no time did Defendant attempt to meet and confer with the undersigned for the  
22 purposes of section 1927 sanctions, and neither can Defendant provide such a showing." ECF  
23 No. 74 at 2. But Mr. Perens did in fact attempt to meet and confer with Plaintiffs' counsel  
24 regarding §1927 sanctions, not once, but twice. *See* Supp. Drummond Hansen Decl. Exhs. 1, 2.

---

25  
26 <sup>3</sup> While Mr. Chhabra relies on Mr. Norman vouching for the "reasonableness" of bringing the  
27 Motion for Partial Summary Judgment based on the "admissions" theory (Opp'n to Fees, Ex. 2 at  
28 ¶8, ECF No. 78-2), as Plaintiffs' expert acknowledges, a statement that is not provably false  
cannot be made so by disbelief in it. This is further supported by the Court's quick disposal of  
the theory at the December 14 Hearing. *See* Dec. 14, 2016 Hr'g Tr. at 7:10-15.

1 Moreover, Plaintiffs' counsel inaccurately described the applicability of a case cited by Mr.  
2 Perens in his Opposition, *Beaver Cty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, No. 16-MC-  
3 80076-JSC, 2016 WL 7212308 (N.D. Cal. Dec. 13, 2016). ECF No. 74 at 2. Specifically,  
4 Plaintiffs' counsel alleged that L.R. 7-8(c) was not at issue in the case, but a review of the  
5 underlying brief demonstrates that it was at issue. *See* Supp. Drummond Hansen Decl., Ex. 3. In  
6 addition, in his opposition to the motion for sanctions, Plaintiffs' counsel continues to assert that  
7 the motion for sanctions should be deemed untimely, an argument the Court has already rejected.  
8 *See* Opp. to Sanctions at 8, ECF No. 79.

9 During the course of this dispute, Plaintiffs' counsel has also engaged in a series of *ad*  
10 *hominem* attacks on Mr. Perens and his counsel. In misconstruing Mr. Perens's statements in his  
11 October 31 Declaration (ECF No. 32-3), Plaintiffs' counsel accused Mr. Perens of intentionally  
12 omitting certain details. *See* Mot. at 8, ECF No. 64; ECF No. 37. Yet, when Mr. Perens tried to  
13 supplement those details, Plaintiffs' counsel accused him of committing "perjury." Mot. for  
14 Sanctions at 8, ECF No. 64; Drummond Hansen Sanctions Decl. ¶ 6. Moreover, in responding to  
15 Mr. Perens's currently pending motions, he continues to besmirch the integrity and competence of  
16 Mr. Perens's counsel, childishly referring to Mr. Perens's counsel as a "dream team,"  
17 condescendingly classifying the first year associates as "interns," and accusing counsel of  
18 "intentionally presnt[ing] inaccurate data" and "doctoring" their request for fees. *See* Opp. to  
19 Mot. for Fees at 1, 3, 4, 9-10. Instead of contacting Mr. Perens regarding the discrepancies,  
20 Plaintiffs' counsel attempts to seize on the error, arguing that it could not possibly be "an honest  
21 mistake." Opp'n to Motion for Fees at 10. Such accusations are unfounded and nonsensical. As  
22 Mr. Perens explains in greater detail in his concurrently filed Reply in Support of the Motion for  
23 Fees, the discrepancies resulted from an unintentional clerical error, a conclusion readily apparent  
24 to anyone attempting to determine the source of the error. Moreover, had Plaintiffs' counsel  
25 notified Mr. Perens's counsel before his opposition, Mr. Perens' counsel would have gladly  
26 explained the error and provided a corrected exhibit. Such baseless accusations and personal  
27 attacks further support an inference of bad faith. *See Moser*, 366 F. Supp. 2d at 973.

28 Plaintiffs' counsel's responses fail to acknowledge any wrongdoing, yet continues to

1 persist in reckless arguments, misstatements of fact and law, and unprofessional *ad hominem*  
2 attacks. Mr. Perens respectfully submits that this further supports an inference of bad faith.

3 **IV. CONCLUSION**

4 Plaintiffs' counsel engaged in a pattern of bad faith and reckless behavior, wherein he  
5 knowingly disregarded obvious risks in pursuit of aggressive litigation tactics. Section 1927  
6 sanctions are designed to deter this exact type of behavior, and Plaintiffs' counsel's continued  
7 pursuit of vexatious litigation strategies in response to Mr. Perens's currently motions further  
8 demonstrates the importance of such deterrence. Because of Mr. Chhabra's personal  
9 responsibility and role in the high costs of this litigation, Mr. Perens respectfully submits that the  
10 Court should impose sanctions on Plaintiffs' counsel.

11 Dated: March 22, 2018

12  
13 MELODY DRUMMOND HANSEN  
14 HEATHER J. MEEKER  
15 CARA L. GAGLIANO  
16 O'MELVENY & MYERS LLP

17 By: Melody Drummond Hansen  
18 Melody Drummond Hansen  
19 Attorneys for Defendant Bruce Perens  
20  
21  
22  
23  
24  
25  
26  
27  
28