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20 **KARLS AND JOHN E. FLEMING**

21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**
23 **SAN FRANCISCO DIVISION**

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

26 Plaintiffs,

27 vs.

28 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

Case No: CV 13-04280 (VC)

Hearing Date: June 5, 2014

Hearing Time: 1:30 p.m.

Place: San Francisco Courthouse

Courtroom: 4, 17th Floor

**NOTICE OF MOTION AND MOTION
FOR SANCTIONS UNDER 28 U.S.C.
§ 1927 AND THE COURT'S INHERENT
POWERS**

1 Ohlsen, Justin James, Shannon Davis, Chris Karls in
2 their capacities as officers, agents and/or employees of
3 Jingit LLC, *Defendants in Negligence, and*
Aiding/Abetting;

4 Wal-Mart, General Electric, Target, DOE(s) and
5 ROE(s) 1 through 10, *Defendants in Negligence*
Secondary-Vicarious Infringement,

6 Defendants.

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3 **STATUTES**

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on June 5, 2014, at 1:30 p.m., or as soon thereafter as counsel may be heard, at the San Francisco Courthouse, Courtroom 4, 17th Floor, before the Honorable Vince Chhabria, Judge of the United States District Court for the District of Northern California, Defendants Todd Rooke, Joe Rogness, Jingit, LLC, Jingit Holdings, LLC, Jingit Financial Services, LLC, 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 will move for an order under 28 U.S.C. § 1927 and/or the Court’s inherent powers awarding sanctions against Plaintiffs and Plaintiffs’ counsel for their litigation misconduct in this matter, including the fabrication of a proposed plaintiff to replace Plaintiff eoBuy, Limited. Defendants seek as a sanction the payment of their fees and costs incurred to respond to Plaintiffs’ attempts to add the various “eoBuy” entities in this case, including without limitation, fees and costs incurred to investigate Plaintiffs’ factual assertions made with respect to the various eoBuy entities by Defendants’ foreign counsel.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the papers on file in this action, and on such other matters as may be presented at or before the hearing on this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF ISSUES TO BE DECIDED

- i. Is it sanctionable conduct under this Court’s inherent powers and/or 28 U.S.C. § 1927, for Plaintiffs to repeatedly seek leave to amend the Complaint and their Response to Defendants’ Motion to Dismiss to add nonexistent and nonviable “eoBuy” plaintiffs, including a proposed plaintiff fabricated earlier this year by Plaintiffs’ CEO and principal after Defendants demonstrated that the original eoBuy, Limited plaintiff had dissolved in 2008 and lacked capacity to sue?

INTRODUCTION

1
2 Plaintiffs and their CEO and principal, Conor Fennelly, have submitted declarations to this
3 Court containing demonstrably false and misleading factual statements and representations. It is
4 clear that Plaintiffs' conduct in submitting these sworn declarations was made in bad faith in order to
5 achieve a litigation objective of preserving Plaintiffs' claims in this lawsuit. Plaintiffs' conduct,
6 however, is an affront to both the Court and the integrity of the judicial process. Moreover,
7 Plaintiffs' counsel's conduct in endorsing and relying on these false and misleading factual
8 statements and representations for their motions, without any apparent verification and despite
9 readily available evidence to the contrary, was reckless and served only to improperly prolong and
10 multiply these proceedings via Plaintiffs' continual but meritless motion practice. Indeed,
11 Defendants have been forced to conduct extensive investigations into foreign corporate records with
12 the assistance of foreign counsel at substantial expense in order to debunk Plaintiffs'
13 misrepresentations. Defendants were also required to respond to Plaintiffs' multiple motions—which
14 rely on these misrepresentations—with substantial briefing and supporting evidence and have been
15 subjected to substantial delay in resolving whether the originally-named Plaintiff, eoBuy, Limited
16 should be dismissed for lack of capacity to sue and whether Plaintiff Indiezone, Inc. should be
17 compelled to arbitrate its claims with Defendants Rooke and Rogness. The conduct by Plaintiffs and
18 their counsel, Douglas Dollinger, is sanctionable under both this Court's inherent powers and 28
19 U.S.C. § 1927 and should not be tolerated.

STATEMENT OF FACTS

23
24 Plaintiffs Indiezone, Inc. and eoBuy, Limited filed the Complaint in the current litigation on
25 September 16, 2013. (Compl., ECF 1.) The Complaint includes a litany of twenty-seven causes of
26 action, (*id.* ¶¶ 266-492), each of which rests on the central allegation that Defendants Todd Rooke
27 and Joe Rogness stole Plaintiffs' alleged intellectual property while they worked for Indiezone, and
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1 later misappropriated it in their operation of their own company Jingit, LLC (“Jingit”) (*see, e.g., id.*
2 ¶¶ 1-5). Despite the alleged wrongdoing stemming from two individuals, the Complaint is brought
3 against a total of twenty-one different Defendants under a variety of theories. (*Id.* ¶¶ 36-51, 200, 247
4 and 259-60.)

5
6 **I. Defendants Discover That Plaintiff EoBuy, Limited is a Dissolved Corporation.**

7 The Complaint alleges that Plaintiff eoBuy, Limited is a privately held Irish corporation
8 whose core business model is that of “licensing and deployment” of a “proprietary payment
9 processing and content monetization platform” that allows “real-time settlement of fractional
10 transactions in amounts less than .99 cents via the Internet for sales of digital content.” (*Id.* ¶¶ 7, 26.)
11 Defendants, however, determined that it was formally dissolved from the Irish Registrar of
12 Companies as of April 4, 2008, over six years ago. (Declaration of Brian Walker (“Walker Decl.”),
13 ECF 30, ¶¶ 5-7, Ex. A.) The fact of eoBuy’s dissolution was reflected in the public records of the
14 Irish Registrar, which could be verified by entering the name “eoBuy” into the Registrar’s public
15 website, available at www.cro.ie/search. (*Id.* ¶ 6 & Ex. A.) Defendants also engaged the services of
16 an Irish Barrister-at-Law, Brian Walker, to independently confirm the dissolved status of Plaintiff
17 eoBuy, Limited as reflected on the Registrar’s website. (*Id.* ¶ 7.)

18
19 Based on this information, on January 10, 2014, the Defendants filed a motion to, *inter alia*,
20 dismiss Plaintiff eoBuy, Limited because, as a dissolved Irish corporation, it lacked capacity to bring
21 suit under governing Irish law. (Mot. of Defs. to Compel Arbitration, ECF 29, Sec. II; Walker Decl.,
22 ECF 30, ¶¶ 5-9, Exs. A & B.) In response, Plaintiffs *admitted* that eoBuy, Limited had dissolved in
23 2008 and therefore lacked capacity to sue. (Pls.’ Mem. in Opp’n, ECF 54, p. 9; *see also* Declaration
24 of Conor Fennelly (“Fennelly Decl.”), ECF 54-1, ¶ 1.)
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1 **II. Plaintiffs Bring Multiple Motions to Attempt to Substitute in Another eoBuy Entity as**
2 **a Plaintiff in This Lawsuit.**

3 **A. Plaintiffs Move to Add “eoBuy Ventures Limited”**

4 Plaintiffs attempted to cure this defect by filing a motion seeking leave to amend their
5 Complaint to add a different Irish company—“eoBuy Ventures Limited”—as a plaintiff. (ECF 57.)
6 In support of that motion, Plaintiffs’ CEO and principal Conor Fennelly submitted a declaration to
7 the Court stating that, before dissolving, eoBuy, Limited’s intellectual property and licenses were
8 assigned to “EoBuy’s holding corporation Amdex, Pte.” and “[s]everal months later ... transferred
9 back into the newly formed company eoBuy Ventures Limited....” (Fennelly Decl., ECF 54-1, ¶ 3.)
10 Mr. Fennelly further represented that “eoBuy Ventures Limited “has been doing business as eoBuy
11 since August 2008....” (*Id.* ¶ 4.) Plaintiffs’ counsel made substantively identical statements and
12 further explained that “CEO Fennelly did not understand the implications of simply using the name
13 eoBuy and when he provided the name of the entities as Plaintiff did not advise this office of the
14 actual name of the entity as the intended Plaintiff, eoBuy Ventures Limited.” (Decl. of Douglas R.
15 Dollinger in Sup. of First Mot. to Amend , ECF 57-1, p. 3.) However, as Defendants demonstrated in
16 their response (ECF 66), a simple search on the Irish Companies Registration Office public website
17 revealed that the purported entity “eoBuy Ventures Limited” did not even exist. (*See* Supplemental
18 Declaration of Brian Walker, “Supp. Walker Decl.,” ECF 61, ¶¶ 3-4, Ex. A.)

21 **B. Plaintiffs Move to Add “eoBuy Licensing Limited”**

22 In the face of this evidence, Plaintiffs did not file a reply brief nor did they withdraw that
23 motion. Instead, Plaintiffs filed a separate, second motion requesting leave to amend their
24 Complaint in which they *admitted* that the purported entity eoBuy Ventures Limited did not exist.
25 (*See* Supplemental Declaration of Conor Fennelly (“Supp. Fennelly Decl.”), ECF 84-3 & 90-2, ¶ 4
26 (filed in support of Pls.’ Sec. Mot. to Amend Compl., ECF 84 & 90).) In support of this second
27 motion, Plaintiffs submitted the supplemental declaration of Mr. Fennelly, which claimed that the
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1 correct entity was actually a third Irish company, named “eoBuy Licensing Limited.” (*Id.* ¶¶ 1-5.)
2 Mr. Fennelly informed the Court that he “was previously under the belief that the name of the
3 Company was eoBuy Ventures Limited and simply forgot that the Corporate Office of Registry of
4 Ireland had not approved the name.” (*Id.* ¶ 4.) Mr. Fennelly then told the Court that he resolved the
5 issue of the incorrect plaintiff name by simply checking his records: “In response to the inquiry from
6 Plaintiffs’ Counsel Mr. Dollinger I reviewed the Corporate filings. The Company is officially named
7 eoBuy Licensing Limited and was registered under its former name in [sic] July 15, 2008.” (*Id.*)
8 That is, Plaintiffs claimed that, sometime in 2008, eoBuy, Limited transferred its intellectual
9 property and licenses to the “newly formed company eoBuy Licensing Limited,” which, according
10 to Plaintiffs, “has been doing business as eoBuy since August 2008....” (*Id.* ¶¶ 3 & 5.) Mr. Fennelly
11 then provided the Court with a single printout from the Irish Companies Registration Office which
12 suggested that “eoBuy Licensing Limited” had existed since July 15, 2008, and that Mr. Fennelly
13 had been a director of this company since that date. (*See* Supp. Fennelly Decl., ECF 84-3 & 90-2,
14 ¶ 4, Ex. A.) As with eoBuy Ventures Limited, Plaintiffs sought leave to add eoBuy Licensing
15 Limited in place of the original plaintiff eoBuy, Limited, and submitted a proposed amended
16 complaint now wholesale attributing all background facts and substantive allegations previously
17 attributed to eoBuy, Limited to eoBuy Licensing Limited (*see* ECF 84-5, p. 8 of 26, ¶ 26).

21 **C. “eoBuy Licensing Limited” Did Not Exist Until March 2014 After Mr. Fennelly**
22 **Changed the Name of a Wholly Unrelated Taxi Company, Which Plaintiffs Then**
23 **Claimed Had Been Doing Business as “eoBuy” Since 2008.**

24 After receiving Plaintiffs’ motion for leave to add eoBuy Licensing Limited as a plaintiff,
25 Defendants conducted an investigation into eoBuy Licensing Limited, which revealed a very
26 different set of facts than those described in Mr. Fennelly’s Supplemental Declaration.

27 Mr. Fennelly made an oblique statement in his Supplemental Declaration that eoBuy
28 Licensing Limited “was registered under its *former* name in [sic] July 15, 2008.” (Supp. Fennelly

1 Decl., ECF 84-3 & 90-2, ¶ 4) (emphasis added). Indeed, public filings showed that the company
2 incorporated on July 15, 2008 was “Laraghcon Chauffeur Drive Limited.” (Second Supplemental
3 Declaration of Brian Walker (“Sec. Supp. Walker Decl.”), ECF 95, ¶ 10, Ex. E.) This company’s
4 business, however, was not remotely related to software development; it was established in 2008
5 “[t]o carry on the business of *taxi hire, limo hire and internet bookings....*” (*Id.* ¶ 11, Ex. F)
6 (emphasis added). Each of this taxi company’s annual returns from 2009 to 2013 were filed under
7 the name “Laraghcon Chauffeur Drive Limited” and signed by its director Michael Byrne and
8 secretary Teresa Byrne. (*Id.* ¶ 12, Ex. G.) The company’s 2011 and 2012 Directors’ Reports and
9 Financial Statements also confirmed that its two directors, Michael and Ciaran Byrne, were the only
10 employees of the company. (*Id.* Ex. I.) Additionally, the filed and audited Directors’ Reports and
11 Financial Statements stated that the company did not conduct any business whatsoever from its
12 incorporation in 2008 through 2012. (*Id.* ¶ 13, Ex. I.)

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15 The first appearance of “eoBuy Licensing Limited” in the Irish Companies Registrar was
16 from a string of filings made by Mr. Fennelly on February 6, 2014. On that date, Mr. Fennelly made
17 three filings with the Irish Companies Registration Office that:

- 18
- 19 • changed the name of Laraghcon Chauffeur Drive Limited to “eoBuy Licensing Limited.” (*Id.*
20 ¶ 9, Ex. B.)
 - 21 • amended the Memorandum and Articles of Association of Laraghcon Chauffeur Drive
22 Limited to change the company’s objective from “[t]o carry on the business of taxi hire, limo
23 hire and internet bookings” to “carry on the business of software development....” (*Id.* ¶ 14,
24 Ex. J; *cf.* Ex. F.)
 - 25 • terminated directors Ciaran Byrne and Michael Byrne and secretary Teresa Byrne and named
26 himself director and secretary of the company. (*Id.* ¶ 12, Ex. H.)

27 Despite filing these changes on February 6, 2014, Mr. Fennelly backdated each of these documents
28 to July 15, 2008—the date Laraghcon Chauffeur Drive was incorporated (*see id.* ¶ 9, Exs. B & C)—
even though these backdated filings were contrary to every public filing made by Laraghcon
Chauffeur Drive Limited from July 2008 to January 2013. Rather, it appeared from Defendants’
investigation that Mr. Fennelly purchased Laraghcon Chauffeur Drive Limited *in 2014* from

1 “Company Setup,” an Irish business that sells “shelf companies” to persons in need of previously-
2 incorporated companies. (*Id.* ¶¶ 22-23.) Finally, the Irish Registrar approved Mr. Fennelly’s request
3 to change the name of the company to “eoBuy Licensing Limited” on March 13, 2014, thus “eoBuy
4 Licensing Limited” did not exist under the laws of Ireland until that date. (*id.* ¶ 9, Ex. D.)

5 ARGUMENT

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7 Plaintiffs’ fabrication of an eoBuy plaintiff for purposes of this lawsuit and repeated
8 misrepresentations to this Court are evident and inexcusable, yet Plaintiffs continued to seek leave to
9 amend to add an eoBuy plaintiff. This conduct impinges on the integrity of the legal process,
10 prejudices Defendants, and calls for sanctions under this Court’s inherent powers and Section 1927.

11 **I. Legal Standard to Impose Sanctions Under The Court’s Inherent Powers.**

12 This Court is invested with the inherent power to sanction both parties and attorneys for
13 improper conduct in litigation. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-46 (1991); *Fink v. Gomez*,
14 239 F.3d 989, 991 (9th Cir. 2001). The Court’s inherent powers are “governed not by rule or statute
15 but by the control necessarily vested in courts to manage their own affairs so as to achieve the
16 orderly and expeditious disposition of cases.” *Chambers*, 501 U.S. at 43 (citation omitted).

17 This Court may sanction a “broad range of improper litigation tactics” under its inherent
18 power. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1197 (9th Cir. 2003). Sanctions may be
19 imposed pursuant to inherent powers even if the conduct in question is also sanctionable under other
20 rules, such as Rule 11 or 28 U.S.C. § 1927. *Nanak Found. Trust v. GMAC Mortg. LLC*, No. C-12-
21 5647 EMC, 2012 U.S. Dist. LEXIS 163676, at *9 (N.D. Cal. Nov. 15, 2012) (discussing availability
22 of Rule 11, § 1927 and inherent powers to sanction and recognizing that “[t]he inherent power of a
23 court can be invoked even if procedural rules exist which sanction the same conduct.”) (quoting
24 *Chambers*, 501 U.S. at 49).

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27 Sanctions issued against a party or counsel pursuant to the Court’s inherent power “are
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1 available if the court specifically finds bad faith or conduct tantamount to bad faith.” *B.K.B. v. Maui*
2 *Police Dep’t*, 276 F.3d 1091, 1107-08 (9th Cir. 2002) (quoting *Fink*, 239 F.3d at 994) (attorney’s
3 knowing and reckless introduction of inadmissible evidence was tantamount to bad faith and
4 warranted sanctions under § 1927 and the court’s inherent power). Bad faith “includes a broad range
5 of willful improper conduct,” *Fink*, 239 F.3d at 992, and may be demonstrated by “delaying or
6 disrupting the litigation or hampering enforcement of a court order.” *Leon v. IDX Sys. Corp.*, 464
7 F.3d 951, 961 (9th Cir. 2006)(internal quotation marks and citation omitted). Conduct “tantamount
8 to bad faith” includes “a variety of types of willful actions, including recklessness when combined
9 with an additional factor such as frivolousness, harassment, or an improper purpose.” *Fink*, 239 F.3d
10 at 994. At bottom, “[t]he focus of the bad faith inquiry is the sanctioned party’s abuse of the judicial
11 process.” *Hubbard v. Plaza Bonita, L.P.*, No. 09-1581-JLS(WVG), 2011 U.S. Dist. LEXIS 64015,
12 at *31-32 (S.D. Cal. June 13, 2011) (citing *Roadway Express v. Piper*, 447 U.S. 752, 765-66 (1980)).
13 The record in the instant case clearly and amply demonstrates Plaintiffs’ bad faith conduct justifying
14 sanctions under the Court’s inherent power.
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17 **II. Plaintiffs’ Fabrication of Proposed Plaintiff eBay Licensing Limited and Related**
18 **Misrepresentations Warrant Sanctions Under This Court’s Inherent Powers.**

19 “It is clear that a district court may, pursuant to its inherent powers, impose sanctions on a
20 party or its counsel for making bad faith misrepresentations to the court.” *Roberts v. Heim*, 184 B.R.
21 814, 818 (N.D. Cal. 1995) (citing *Mark Industries, Ltd. v. Sea Captain’s Choice, Inc.*, 50 F.3d 730,
22 732-33 (9th Cir. 1995) (“upholding district court’s imposition of sanctions on attorney for bad faith
23 conduct including misrepresentation of facts to the court and emphasizing that the court was within
24 its discretion to view attorney’s actions as ‘willful abuse of the judicial process or bad faith
25 conduct’”). Bad faith misrepresentations to the court justifying imposition of sanctions under the
26 court’s inherent power can take many forms. *See, e.g., Roberts*, 184 B.R. at 818 (inherent powers
27 sanction justified when party’s “representations regarding its intent to reach a settlement agreement
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1 were not genuine” and were instead “a bad faith effort to stall” anticipated adverse ruling).

2 Unsurprisingly, submitting false documents to the court or parties constitutes sufficient
3 misconduct to trigger exercise of the court’s inherent power to sanction. *See, e.g., Hubbard*, 2011
4 U.S. Dist. LEXIS 64015, at *30-33 (imposing sanctions under §1927 and court’s inherent authority
5 when plaintiff’s counsel submitted to defendants a proposed settlement agreement purportedly
6 containing the plaintiff party’s genuine signature when the signature was not, in fact, the plaintiff
7 party’s signature); *Emma C. v. Eastin*, No. C-96-4179 TEH, 2001 U.S. Dist. LEXIS 16119, at *5-8
8 (N.D. Cal. Oct. 4, 2001)(noting that “[f]abricating documentary evidence is a litigation abuse” and
9 ordering further proceedings to determine sanctions under court’s inherent powers or Rule 11 based
10 on “doctored” petitions submitted to the court and later withdrawn once falsification raised). The
11 court considers filing of a fraudulent document “a serious matter because its very nature threatens
12 the integrity of the judicial process.” *Id.* at *6 (citation and internal quotation marks omitted).

13 False and misleading documents justifying inherent power sanctions may also be in the form
14 of sworn declarations or affidavits. *See, e.g., Nanak Found. Trust*, 2012 U.S. Dist. LEXIS 163676,
15 at *9-11 (ordering plaintiff to show cause why sanctions should not issue under Rule 11, § 1927 or
16 the Court’s inherent powers when plaintiffs submitted misleading information by “omitting the
17 second page of an exhibit to the verified complaint that serves to exonerate Defendants from the
18 wrongdoing alleged in the complaint and in Plaintiff’s TRO application” and inferring bad faith
19 when omitted page was available to plaintiff). Sanctioning a party or its counsel for “the filing of
20 false or seriously misleading affidavits is appropriate under [the court’s] inherent powers, whether
21 the Court makes a specific contempt finding or not, to maintain the authority and dignity of the
22 Court.” *Mercury Serv. v. Allied Bank*, 117 F.R.D. 147, 158 (C.D. Cal. 1987). In the *Mercury*
23 *Service* case, the defendant submitted a declaration in support of a motion to dismiss for lack of
24 personal jurisdiction, which “at least partially lacked factual foundation” because the declarant failed
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1 to have personal knowledge of all of the statements therein. *Id.* at 158. As a result, the declaration
2 “misled the plaintiffs” into believing that the declarant was the appropriate person employed by the
3 defendant to depose regarding the matters stated within the declaration about the defendant’s
4 contacts with the forum state, and plaintiffs “had to expend effort to disprove this.” *Id.* Not only was
5 the declaration misleading with regard to the declarant’s knowledge, however, the court found that
6 “the Declaration contain[ed] other misleading if not outrightly false statements.” *Id.* The declarant
7 represented that the defendant bank’s business practice was to do business with local persons and
8 that it did not accept deposits or make loans in California and owned no real property in California.
9 *Id.* The court noted that “[t]hese statements in their context imply that the bank has no contacts with
10 California whatsoever. This is misleading.” *Id.* Instead, the court found that the defendant bank
11 conducted substantial loans with California businesses, had security interests in California real and
12 personal property, would obtain title to California real property securing certain loans in the event of
13 default, and sent bank officers to California to service and encourage expansion of existing business
14 relationships with California residents. *Id.* Under these circumstances, “[p]ursuant to Rule 11 and
15 its inherent powers, the Court finds that sanctions are appropriate both because the statement that
16 [the declarant] had personal knowledge is false and because the representations about the bank’s
17 California contacts are misleading” which “led to otherwise unnecessary inquiries and arguments by
18 the plaintiffs” and warranted “punishment to deter similar conduct that demonstrates disrespect for
19 the dignity and authority of the courts.” *Id.* at 159.

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23 In the instant case, a publicly-available paper trail unequivocally shows that Mr. Fennelly’s
24 *post hoc* solution to Defendants’ motion to dismiss eoBuy, Limited was to take the existing taxi
25 company Laraghcon Chauffeur Drive Limited, rename it “eoBuy Licensing Limited,” change its
26 objective to “software development,” and make himself director and secretary. The documents also
27 establish that Mr. Fennelly’s sworn statement that, in 2008, eoBuy, Limited’s intellectual property
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1 and licenses were purportedly transferred to “the *newly formed* company eoBuy Licensing Limited”
2 was simply untrue. (*Compare* Supp. Fennelly Decl., ECF 84-3 & 90-2, ¶ 3, with Sec. Supp. Walker
3 Decl., ECF 95, ¶ 9.) Likewise, Mr. Fennelly’s sworn representation that “eoBuy Licensing Limited
4 has been doing business as eoBuy since August 2008” was also patently false. (*Compare* Supp.
5 Fennelly Decl., ECF 84-3 & 90-2, ¶ 5, with Sec. Supp. Walker Decl., ECF 95, ¶ 9.) Plaintiffs’
6 fabrication of proposed plaintiff eoBuy Licensing Limited and related false and misleading
7 representations to this Court made in an effort to add this entity to the case, constitutes at least as
8 egregious conduct as that sanctioned under the court’s inherent powers in the cases cited *supra*.¹
9 Indeed, Plaintiffs’ misrepresentations to this Court involve no small matter; Plaintiffs have attempted
10 to manufacture a plaintiff party who would have the right to pursue the 27 causes of action raised in
11 the Complaint against numerous defendants. Such misconduct strikes at the core of this lawsuit and
12 the integrity of the judicial process. This Court should sanction Plaintiffs under its inherent powers.
13
14

15 **III. Plaintiffs’ Continued Efforts to Add an eoBuy Entity as a Plaintiff Warrant Sanctions**
16 **Under 28 U.S.C. § 1927.**

17 28 U.S.C. § 1927 authorizes the imposition of sanctions upon any attorney “who so
18 multiplies the proceedings in any case unreasonably and vexatiously....” 28 U.S.C. § 1927.
19 “Section 1927 does not distinguish between winners and losers or plaintiffs and defendants, but is
20 only concerned with limiting the abuse of court processes.” *Anderson v. Asset Acceptance, LLC*, No.
21 C 09-2970 MEJ, 2010 U.S. Dist. LEXIS 50975, at *10 (N.D. Cal. Apr. 29, 2010) (citing *Roadway*
22 *Express, Inc.*, 447 U.S. at 762). For an award of sanctions under Section 1927, a showing of
23 recklessness, rather than bad faith, suffices. *B.K.B.*, 276 F.3d at 1107 (citing *Fink*, 239 F.3d at 993).
24
25

26 ¹ In addition, Mr. Fennelly’s apparent false statements on his February 2014 filings to the
27 Irish Registrar, such as the July 2008 effective dates of the company’s name and director changes,
28 constituted a violation of Section 242 of the Companies Act 1990 under Irish law, which prohibits
the submission of false and misleading information to the Registrar of Companies. (Sec. Supp.
Walker Decl., ECF 95, ¶ 24, Ex. L.)

1 Plaintiffs' counsel's continual efforts to add an eoBuy plaintiff to this litigation were at least
2 reckless because the motions to amend the Complaint were frivolous and clearly made without any
3 meaningful inquiry by counsel. For purposes of Section 1927 sanctions, a "'frivolous' filing is one
4 'that is *both* baseless and made without a reasonable and competent inquiry.'" *Thomas v. Girardi*,
5 611 F.3d 1027, 1062 (9th Cir. 2010)(citation omitted)(emphasis in original). "That is, in the
6 context[] of § 1927, frivolousness should be understood as referring to legal or factual contentions so
7 weak as to constitute objective evidence of improper purpose." *Id.* (citation omitted).

9 Here, counsel's misconduct began with Plaintiffs' first motion seeking leave to amend the
10 Complaint to add in "eoBuy Ventures Limited" to replace original plaintiff eoBuy, Limited. After
11 learning through Defendants' motion to dismiss that eoBuy, Limited had dissolved in 2008 and thus
12 lacked capacity to sue, reasonable and competent counsel might be more careful in vetting the entity
13 that might take eoBuy, Limited's place in the litigation—especially when, according to counsel, his
14 client "did not understand the implications of simply using the name eoBuy...and did not advise this
15 office of the actual name of the entity as the intended Plaintiff..." (Decl. of Douglas R. Dollinger in
16 Sup. of First Mot. to Amend, ECF 57-1, p. 3.) Nonetheless, Plaintiffs' counsel conducted no
17 inquiry, since the second eoBuy entity proffered, "eoBuy Ventures Limited," did not actually exist
18 as claimed by Plaintiffs in their motion and supporting declarations. Indeed, had counsel conducted
19 a simple search on the Irish Registrar's website, this fact would be easily revealed.

22 Counsel's reckless behavior continued, however, when Plaintiffs filed a second, separate
23 motion seeking leave to amend the Complaint, this time attempting to add a third eoBuy entity,
24 "eoBuy Licensing Limited." Counsel's basis for this motion was that Mr. Fennelly made yet another
25 mistake but, after allegedly reviewing his corporate records, could confirm that the correct entity to
26 add was "eoBuy Licensing Limited." (Decl. of Douglas R. Dollinger in Sup. of Sec. Mot. to Amend,
27 ECF 89, p. 2.) In fact, Mr. Dollinger himself stated in his second Declaration that "The fact remains
28

1 that [in 2008] eoBuy’s IP and licenses were ... transferred back into the newly formed company
2 eoBuy Licensing Limited, a company formed under the law of Ireland.” (*Id.*) Plaintiffs then filed a
3 motion “requesting an enlargement of time to submit a corrected response and/or renew their
4 response to the Defendants’ motions to compel arbitration, dismiss or stay the proceedings [sic]”
5 which sought to add the falsified entity eoBuy Licensing Limited to the case. (ECF 91.)
6

7 Counsel presumably and simply took Mr. Fennelly’s representations at face value, repeating
8 them in counsel’s sworn declarations even though Defendants’ previous filings showed that “eoBuy
9 Licensing Limited” had not appeared in the search results for any “eoBuy” entities from the Irish
10 Registrar conducted just weeks earlier. (Supp. Walker Decl., ECF 61, ¶ 5, Ex. B.) Counsel’s failure
11 to conduct any investigation provides objective evidence of an improper purpose warranting Section
12 1927 sanctions. *Thomas*, 611 F.3d at 1063.
13

14 Ultimately, Defendants have been forced to respond to each of these motions, expending
15 significant time, money and resources—including the retention of foreign counsel because of the
16 foreign status of the proposed eoBuy plaintiffs—in order to expose the falsity of Plaintiffs’ claims.
17 It is clear that Plaintiffs’ counsel has pushed advocacy far past its breaking point, repeatedly raising
18 frivolous arguments to this Court in three separate motions seeking leave to amend the Complaint
19 and renew Plaintiffs’ response to Defendants’ motion, resulting in the unreasonable and vexatious
20 multiplication of these proceedings. This Court should sanction Plaintiffs’ counsel pursuant to
21 Section 1927.
22

23 **IV. Defendants Should Be Awarded Their Fees and Costs Incurred to Investigate and**
24 **Address Plaintiffs’ Sanctionable Conduct.**

25 Upon a finding of bad faith, the court may enter a variety of sanctions against a party or
26 attorney under its inherent power, ranging from attorneys’ fees to outright dismissal of claims.
27 *Chambers*, 501 U.S. at 44-45; *Barnd v. City of Tacoma*, 664 F.2d 1339, 1342 (9th Cir. 1982) (“A
28 trial court’s inherent powers unquestionably include the power to assess attorney’s fees against any

1 counsel who willfully abuses judicial process or otherwise conducts litigation in bad faith.”).

2 Similarly, sanctions under Section 1927 that may be imposed personally on an attorney may
3 include “the excess costs, expenses, and attorneys’ fees reasonably incurred because of such
4 [sanctionable] conduct.” 28 U.S.C. § 1927. Such sanctions may include the costs arising from the
5 sanctions proceedings themselves to further the “goal of deterring future similar sanctionable
6 conduct” and remedying the harm caused in terms of time, effort and money a party must expend to
7 pursue sanctions. *Hubbard*, 2011 U.S. Dist. LEXIS 64015, at *29-30 (citation omitted).

9 As a result, Defendants request as a sanction their reasonable fees and costs incurred in
10 responding to Plaintiffs’ various motions related to seeking leave to add eoBuy entities to this suit
11 (ECF 57, 84, 90 and 91), including the fees and costs to investigate the eoBuy entities incurred by
12 Defendants’ Irish counsel, and the fees and costs incurred in bringing this motion for sanctions.
13 Excluding preparation of this motion for sanctions, to date Defendants have incurred at least
14 \$32,251.62 in estimated fees and costs to respond to Plaintiffs’ motions at issue. (Declaration of
15 Keiko L. Sugisaka in Support of Defendants’ Motions for Sanctions, ¶ 9.)

17 CONCLUSION

18 For the foregoing reasons, moving Defendants respectfully ask this Court to impose
19 sanctions on Plaintiffs and their counsel pursuant to the Court’s inherent powers and § 1927.

22 Dated: May 1, 2014

MASLON EDELMAN BORMAN & BRAND, LLP

23 By: 
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