



Via Electronic Case Filing and U.S. Mail

May 14, 2014

Molly C. Dwyer
Clerk of the Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, California 94119-3939

**Re: *Ingenuity 13 LLC v. John Doe*, 13-55859 & consolidated appeals
Response to Appellee's Citation of Supplemental Authority**

To the Court:

On May 12, 2014, Appellee's counsel cited supplemental authority in the above-captioned consolidated appeal. Because none of cited cases are relevant to the instant appeal, Appellants respectfully submit this brief response.

Octane Fitness, LLC v. Icon Health & Fitness, 572 U.S. ____ (2014):

In *Octane Fitness*, the Court held that a District Court's discretion to award attorneys' fees in "exceptional cases" under 35 U.S.C. § 285 ("Section 285") was not limited to cases involving material inappropriate conduct, subjective bad faith or objectively baseless claims. Unlike *Octane Fitness*, the instant appeal involves the District Court's award of criminal sanctions under its inherent authority, rather than Section 285. A decision involving a statutory interpretation under Rule 285 has no bearing on the procedural due process requirements, scope and damages available under a District Court's inherent authority.

Highmark Inc. v. Allcare Health Management System, Inc., 572 U.S. ____ (2014):

Highmark, also decided under Section 285, held that the District Court's determination that the case met Section 285's "exceptional case" requirement was to be reviewed under an abuse of discretion standard, rather than a *de novo* standard. This holding has no apparent relevance to the due process requirements for imposing criminal sanctions or scope of a Court's inherent authority. A Court has no discretion to ignore criminal due process requirements or to single-handedly extend the scope of its inherent authority.

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Respectfully submitted,

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cc: Service on all parties through ECF