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12 FUND II, LP; Y COMBINATOR FUND II GP, LLC;
Y COMBINATOR RE, LLC; Y COMBINATOR S2012, LLC;
Y COMBINATOR W2013, LLC

13 [Additional counsel on signature page]

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 THINK COMPUTER CORPORATION, a Delaware
corporation,

19 Plaintiff,

20 v.

21 DWOLLA, INC.; ACTBLUE, LLC; AIRBNB, INC.;
22 POUND PAYMENTS ESCROW SERVICES, INC.
DBA BALANCED PAYMENTS; CLINKLE
23 CORPORATION; COINBASE, INC.; COINLAB,
INC.; FACEBOOK, INC.; FACEBOOK
24 PAYMENTS, INC.; GOPAGO, INC.; GUMROAD,
INC.; SQUARE, INC.; STRIPE, INC.; THE BOARD
25 OF TRUSTEES OF THE LELAND STANFORD
JUNIOR UNIVERSITY; A-GRADE
26 INVESTMENTS, LLC; A-GRADE INVESTMENTS
II, LLC; ANDREESSEN HOROWITZ LLC;
27 ANDREESSEN HOROWITZ FUND I, LP;
ANDREESSEN HOROWITZ FUND I-A, LP;
28 ANDREESSEN HOROWITZ FUND I-B, LP;
ANDREESSEN HOROWITZ FUND II, LP;

Case No.: 5:13-cv-2054-EJD

Action Filed: May 6, 2013

**INVESTOR DEFENDANTS' NOTICE
OF MOTION AND MOTION FOR
SANCTIONS UNDER FEDERAL
RULES OF CIVIL PROCEDURE
11(b)(2) AND 11(c)(2) AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: January 10, 2014

Time: 9 a.m.

Dept: Courtroom 4, 5th Floor

Trial Date: None set

Honorable Edward J. Davila

1 ANDREESSEN HOROWITZ FUND II-A, LP;
2 ANDREESSEN HOROWITZ FUND II-B, LP;
3 ANDREESSEN HOROWITZ FUND III, LP;
4 ANDREESSEN HOROWITZ FUND III (AIV), LP;
5 ANDREESSEN HOROWITZ FUND III-A, LP;
6 ANDREESSEN HOROWITZ FUND III-B, LP;
7 ANDREESSEN HOROWITZ FUND III-Q, LP;
8 DIGITAL SKY TECHNOLOGIES, LIMITED; DST
9 GLOBAL, LIMITED; DSTG-2 2011 ADVISORS,
10 LLC; DSTG-2 2011 INVESTORS DLP, LLC;
11 DSTG-2 2011 INVESTORS ONSHORE, LP;
12 KLEINER PERKINS CAUFIELD & BYERS, LLC;
13 KLEINER PERKINS CAUFIELD & BYERS XIII,
14 LLC; KLEINER PERKINS CAUFIELD & BYERS
15 XIII FOUNDERS FUND, LLC; KLEINER
16 PERKINS CAUFIELD & BYERS XIV, LLC;
17 KLEINER PERKINS CAUFIELD & BYERS XV,
18 LLC; SEQUOIA CAPITAL, LLC; SEQUOIA
19 CAPITAL NEW PROJECTS, LLC; SEQUOIA
20 CAPITAL XII, LP; SC XII MANAGEMENT, LLC;
21 SEQUOIA CAPITAL XII PRINCIPALS FUND,
22 LLC; SEQUOIA CAPITAL SCOUT FUND I, LLC;
23 SEQUOIA CAPITAL SCOUT FUND II, LLC;
24 SEQUOIA CAPITAL U.S. SCOUT FUND III, LLC;
25 SEQUOIA CAPITAL U.S. SCOUT SEED FUND
26 2013, LP; SEQUOIA TECHNOLOGY PARTNERS
27 XII, LP; UNION SQUARE VENTURES LLC;
28 UNION SQUARE VENTURES OPPORTUNITY
FUND, LP; UNION SQUARE VENTURES 2012
FUND, LP; Y COMBINATOR, LLC;
Y COMBINATOR FUND I, LP; Y COMBINATOR
FUND I GP, LLC; Y COMBINATOR FUND II, LP;
Y COMBINATOR FUND II GP, LLC;
Y COMBINATOR RE, LLC; Y COMBINATOR
S2012, LLC; Y COMBINATOR W2013, LLC;
BRIAN CHESKY; MAX LEVCHIN; YURI
MILNER; YISHAN WONG,

Defendants.

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on January 10, 2014, at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Edward J. Davila, United States District Judge, in Courtroom 4, 5th Floor, of the United States District Court for the Northern District of California, located at 280 South 1st Street, San Jose, California 95113, Defendants A-Grade Investments, LLC; A-Grade Investments II, LLC; Andreessen Horowitz Fund I, LP; Andreessen Horowitz Fund I-A, LP; Andreessen Horowitz Fund I-B, LP; Andreessen Horowitz Fund II, LP; Andreessen Horowitz Fund II-A, LP; Andreessen Horowitz Fund II-B, LP; Andreessen Horowitz Fund III, LP; Andreessen Horowitz Fund III (AIV), LP; Andreessen Horowitz Fund III-A, LP; Andreessen Horowitz Fund III-B, LP; Andreessen Horowitz Fund III-Q, LP; Digital Sky Technologies, Limited; DSTG-2 2011 Advisors, LLC; DSTG-2 2011 Investors DLP, LLC; DSTG-2 2011 Investors Onshore, LP; Kleiner Perkins Caufield & Byers, LLC; Kleiner Perkins Caufield & Byers XIII, LLC; Kleiner Perkins Caufield & Byers XIII Founders Fund, LLC; Kleiner Perkins Caufield & Byers XIV, LLC; Kleiner Perkins Caufield & Byers XV, LLC; Sequoia Capital, LLC; Sequoia Capital New Projects, LLC; Sequoia Capital XII, LP; SC XII Management, LLC; Sequoia Capital XII Principals Fund, LLC; Sequoia Capital Scout Fund I, LLC; Sequoia Capital Scout Fund II, LLC; Sequoia Capital U.S. Scout Fund III, LLC; Sequoia Capital U.S. Scout Seed Fund 2013, LP; Sequoia Technology Partners XII, LP; Union Square Ventures, LLC; Union Square Ventures Opportunity Fund, LP; Union Square Ventures 2012 Fund; Y Combinator, LLC; Y Combinator Fund I, LP; Y Combinator Fund I GP, LLC; Y Combinator Fund II, LP; Y Combinator Fund II GP, LLC; Y Combinator RE, LLC; Y Combinator S2012, LLC; and Y Combinator W2013, LLC (collectively, the “VC Defendants”) along with Brian Chesky, Max Levchin, Yuri Milner, and Yishan Wong (collectively, the “Individual Investor Defendants”) (the VC Defendants and the Individual Investor Defendants together, the “Investor Defendants”) will and hereby do move, pursuant to Federal Rules of Civil Procedure 11(b)(2) and 11(c)(2), for an order sanctioning Plaintiff Think Computer Corporation’s (“Plaintiff” or “Think Computer”) counsel for filing and not withdrawing or correcting the First Amended Complaint (“Amended Complaint”). The motion

1 is made on the grounds that Plaintiff's counsel has chosen to burden this Court and the Investor
2 Defendants with this lawsuit despite the fact that a reasonable inquiry into the facts and law in this
3 instance would have revealed that the claims against the Investor Defendants in the Amended
4 Complaint are not warranted by existing law or by a non-frivolous argument for extending,
5 modifying, or reversing existing law or for establishing new law. There is no federal jurisdiction
6 for the two claims (California Business & Professions Code Section 17200 and unjust enrichment)
7 asserted against the Investor Defendants in the Amended Complaint, and both claims fail to state a
8 claim on which relief can be granted against the Investor Defendants.

9 This motion was served on Plaintiff's counsel on August 8, 2013, under Federal Rule of
10 Civil Procedure 5. The Amended Complaint was not withdrawn or corrected within twenty-one
11 days (plus three days for mailing) after such service.

12 This motion is based on this Notice of Motion and Motion, the accompanying Memorandum
13 of Points and Authorities, the Declaration of Kenneth G. Hausman, the pleadings, orders, and other
14 papers on file in this action, and on such other evidence and argument as may be presented to the
15 Court on reply and/or at the time of hearing.

16 **STATEMENT OF ISSUES**

17 1. Whether the Court should impose sanctions pursuant to Federal Rule of Civil
18 Procedure 11 against Plaintiff's counsel for filing and not withdrawing or correcting the First
19 Amended Complaint.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **INTRODUCTION**

22 This lawsuit is brought by Plaintiff Think Computer Corporation. The VC Defendants are
23 venture capital firms and their funds which invest in a wide array of companies, and are alleged to
24 have invested in some of the other companies named as defendants (the "Operator Defendants").
25 The Individual Investor Defendants are alleged to have invested in VC Defendant funds or Operator
26 Defendants. Because there is no federal jurisdiction for the claims asserted against the Investor
27 Defendants (the VC Defendants and the Individual Investor Defendants), and further because the
28 claims asserted against them are not warranted by existing law or by a non-frivolous argument for

1 extending, modifying, or reversing existing law or for establishing new law, the Investor
2 Defendants served this motion on Plaintiff's counsel and asked him to withdraw or correct the
3 Amended Complaint. He failed to do so within 21 days (plus three days for mailing) of service of
4 the motion, and the Investor Defendants request sanctions under Federal Rule of Civil Procedure 11
5 for his failure to do so.

6 According to the Amended Complaint, Plaintiff operated a failed money transmission
7 business known as FaceCash. See Amended Complaint ¶¶46-57. FaceCash is now defunct because
8 it opted to close its business after failing to secure the necessary license to operate as a purported
9 Money Service Business in California. See Amended Complaint ¶48. Plaintiff does not allege the
10 Investor Defendants impeded its attempts to secure this license. Rather, Plaintiff claims that the
11 state of California is the true culprit, and that its onerous regulatory scheme has made obtaining a
12 license nearly impossible. Indeed, Plaintiff brought a lawsuit against numerous California state
13 officials challenging the state's money transmission licensing practices. See *Think Computer Corp.*
14 *v. Venchiarutti*, No. CV 11-05496-HRL (Jan. 31, 2012) (First Amended Complaint attached as
15 Exhibit A to the Declaration of Kenneth G. Hausman in Support of Investor Defendants' Motion for
16 Sanctions Under Federal Rules Of Civil Procedure 11(b)(2) and 11(c)(2) ("Hausman Decl."), and
17 for which judicial notice is requested under Federal Rule of Evidence 201(b)(2)).

18 Not content to sue these California state officials or similarly accept responsibility for its
19 own failures, Plaintiff now is attempting to blame the FaceCash shutdown on some of its alleged
20 competitors—the Operator Defendants, who allegedly did not comply with the state licensing
21 requirements, and their direct and indirect investors, the Investor Defendants. Even before
22 Plaintiff's counsel filed the Amended Complaint, counsel for some of the Investor Defendants
23 asked Plaintiff's counsel to dismiss them or not name them in the Amended Complaint because of
24 the lack of federal jurisdiction and failure to state a claim in the original Complaint. Upon the filing
25 of the Amended Complaint, the Investor Defendants renewed this request by serving Plaintiff's
26 counsel with this motion on August 8, 2013.

27 The Investor Defendants have spent considerable time and incurred attorneys' fees and other
28 expenses in filing a motion to dismiss the Amended Complaint under Federal Rules of Civil

1 Procedure 12(b)(1) and (b)(6) and this motion under Rule 11. Plaintiff and its attorney have refused
 2 to withdraw or correct the Amended Complaint, which fails to allege federal jurisdiction or state a
 3 claim. The remedy of Rule 11 sanctions is necessary here to deter such abuses of the legal system.¹

4 **FACTUAL BACKGROUND**

5 Plaintiff, a corporation attempting to act pro per, filed its initial complaint (“Complaint”) on
 6 May 6, 2013. Dkt. 1. The Complaint alleged that Plaintiff had to cease operating a money
 7 transmission business known as FaceCash because California’s “onerous” regulatory scheme
 8 prevented it from obtaining the necessary license. Complaint ¶¶42, 47-52.

9 The Complaint did not allege that any of the named Defendants impeded Plaintiff’s effort to
 10 obtain a money transmission license. Plaintiff nevertheless contended the actions of the Operator
 11 Defendants and the Investor Defendants somehow impaired its ability to operate a “lawful” money
 12 transmission business. *See id.* ¶¶1-4. With respect to the VC Defendants and several of the
 13 Individual Investor Defendants, the Complaint relied solely on their status as investors in the
 14 Operator Defendants as the basis for purported liability. *Id.* ¶¶30-31, 33, 69-79. With respect to
 15 one of the Individual Investor Defendants, the Complaint’s theory of liability was even more remote
 16 and relied on his status as an investor in one the VC Defendants, which in turn is an alleged investor
 17 in an Operator Defendant. *Id.* ¶¶32, 79. Plaintiff seemed particularly miffed by the business
 18 judgment of two VC Defendants not to invest in FaceCash. *See id.* ¶¶83-84.

19
 20
 21 ¹ Plaintiff’s CEO is Aaron Greenspan. *See* Dkt. 1 at 37. Mr. Greenspan, who claims to be the real
 22 inventor of Facebook, has bragged on his personal blog how his penchant for legal action somehow
 benefits society:

23 So there you have it. I’m not just suing the State of California over its
 24 unconstitutional law written by financial lobbyists for the exclusive benefit of multi-
 25 billion dollar corporations. I’m also suing Ben Mezrich on copyright infringement,
 defamation, racketeering, and fraud charges, among others. (And Random House.
 And Sony Pictures. And Mezrich’s shell corporation.)

26 Does that make me litigious? Yes, it certainly does. And I wouldn’t have it any
 27 other way. For the real question isn’t whether or not I know how to defend my rights
 28 in court. The real questions are whether or not it makes me right to do so, and
 whether or not society will benefit from my having done it. As Ira Glass and *This
 American Life* have aptly demonstrated, I think the answer to both is “yes.” (*See*
 Hausman Decl. Ex. B)

1 The Complaint attempted to allege claims under California Business & Professions Code
2 17200 (California’s Unfair Competition Law (“UCL”)) and for unjust enrichment against all
3 Defendants. Complaint ¶¶86-105. The Complaint also alleged a violation of the Lanham Act,
4 *solely* against Defendant Dwolla, Inc., an Operator Defendant, for allegedly false statements in
5 various publications about Dwolla’s operations. *Id.* ¶¶106-112. Finally, the Complaint alleged a
6 cause of action for gross negligence solely against the VC Defendants. *Id.* ¶¶113-117.

7 The Complaint alleged jurisdiction based on federal question, diversity, and pendant party.
8 Complaint ¶¶6-7. The Complaint, however, implicitly conceded the lack of diversity jurisdiction in
9 alleging that “*many* of the defendants are citizens of different states and/or countries from the
10 plaintiff.” *Id.* ¶7 (emphasis added). Indeed, the Complaint specifically conceded that Plaintiff and
11 “*many*” of the VC Defendants are headquartered in, and thus citizens of, California, negating
12 diversity. *Id.* ¶¶10, 25, 27, 28, 29; *see* 28 U.S.C. §1332(c)(1). The Complaint did not explain how
13 there could be federal question or pendant party jurisdiction against the Investor Defendants for the
14 exclusively state law claims asserted against them.

15 Apart from the lack of federal jurisdiction as to the Investor Defendants, the Complaint
16 sought to impose UCL liability on them solely because of their status as direct or indirect investors
17 in the Operator Defendants. As such, Plaintiff lacked standing to pursue these claims, and no
18 legally cognizable claim was stated against the Investor Defendants. Indeed, certain allegations
19 appeared to evidence the Complaint was motivated primarily by Plaintiff’s frustration at failing to
20 persuade certain of the VC Defendant funds to invest in Plaintiff, rather than any bona fide legal
21 harm. *See* Compl. ¶¶83-84.

22 Shortly after Plaintiff filed the Complaint, the Court issued an Order to Show Cause
23 requiring Plaintiff to obtain counsel and not appear pro per. Plaintiff retained counsel (*see* Dkt. 69)
24 who informed Defendants that he likely would file an amended complaint. *See* Hausman Decl. ¶5.
25 Counsel for certain of the Investor Defendants responded to Plaintiff’s counsel by noting the
26 deficiencies in the Complaint and urged Plaintiff’s counsel not to file an amended complaint
27 repeating the Complaint’s frivolous claims against the Investor Defendants. In a letter to counsel
28 for Plaintiff dated June 11, 2013, counsel for the Andreessen Horowitz and Y Combinator VC

1 Defendant entities pointed out the lack of federal jurisdiction and the lack of any legally cognizable
2 basis for the claims asserted against them. Hausman Decl. ¶6 & Ex. C. Counsel for the Sequoia
3 and Kleiner Perkins VC Defendant entities raised similar concerns in a June 13, 2013 letter, which
4 pointed out that Plaintiff lacked standing to pursue a claim under the UCL and was pursuing
5 otherwise meritless claims. *Id.* ¶7 & Ex. D. Counsel for the A-Grade Defendant entities and
6 Individual Investor Defendants Chesky and Wong raised similar concerns in a June 14, 2013 letter.
7 *Id.* ¶7 & Ex. E. The letters also raised the specter of Rule 11 sanctions if Plaintiff's counsel chose
8 to file an amended complaint naming these VC Defendants. *Id.* Exs. C-E.

9 Undeterred, Plaintiff's counsel continued to ignore basic principles of corporate and
10 procedural law and filed the Amended Complaint on June 21, 2013. Dkt. 76. Although it contains
11 a few cosmetic changes (for example, dropping the gross negligence claim) and adds more
12 defendants, the Amended Complaint, like its predecessor, seeks to impose liability on the Investor
13 Defendants under the UCL and for unjust enrichment solely based on their status as direct or
14 indirect investors in some of the Operator Defendants. *See* Amended Complaint ¶¶99-104. Like the
15 Complaint, the Amended Complaint alleges a violation of the Lanham Act against (this time) three
16 of the Operator Defendants for allegedly false claims about their own operations, but not against the
17 Investor Defendants. *Id.* ¶¶118-133. The Amended Complaint omits the allegations of diversity
18 and pendant party jurisdiction, and alleges solely federal question jurisdiction against all
19 Defendants. *Id.* ¶31. As is apparent on the face of the Amended Complaint, there is no federal
20 question jurisdiction for the two state law claims asserted against the Investor Defendants.

21 Pursuant to Federal Rule of Civil Procedure 11(c)(2), the Investor Defendants served a copy
22 of this motion on Plaintiff's counsel on August 8, 2013. Hausman Decl. ¶9.

23 **I. THE COURT SHOULD SANCTION PLAINTIFF'S COUNSEL FOR FILING AND**
24 **NOT WITHDRAWING OR CORRECTING THE FRIVOLOUS FIRST AMENDED**
25 **COMPLAINT.**

26 Federal Rule of Civil Procedure 11 imposes upon attorneys "a duty prior to filing a
27 complaint not only to conduct a reasonable factual investigation, but also to perform adequate legal
28 research that confirms whether the theoretical underpinnings of the complaint are warranted by
existing law or a good faith argument for an extension, modification or reversal of existing law."

1 *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127, 1132 (9th Cir. 2002) (citation and internal quotation
2 marks omitted) (finding complaint violated Rule 11 and remanding to District Court to further
3 explain sanctions order); *Moser v. Bret Harte Union High Sch. Dist.*, 366 F. Supp. 2d 944, 950
4 (E.D. Cal. 2005) (“Rule 11 creates and imposes on a party or counsel an affirmative duty to
5 investigate the law and facts before filing.”). An attorney who files a complaint without performing
6 this inquiry is subject to sanctions under Rule 11. *See* Fed. R. Civ. P. 11(c).

7 Where a complaint is the focus of a Rule 11 motion, courts examine “(1) whether the
8 complaint is legally or factually baseless from an objective perspective, and (2) if the attorney has
9 conducted a reasonable and competent inquiry before signing and filing it.” *Holgate v. Baldwin*,
10 425 F.3d 671, 676 (9th Cir. 2005) (citation and internal quotation marks omitted) (awarding Rule 11
11 sanctions where complaint failed to allege the required elements of the asserted cause of action). A
12 pleading that is “both baseless and made without a reasonable and competent inquiry” into the law
13 and facts is, by definition, deemed “frivolous.” *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir.
14 1997) (citation and internal quotation marks omitted), *abrogated on other grounds*, *Fossen v. Blue*
15 *Cross & Blue Shield of Montana*, 660 F.3d 1102 (9th Cir. 2011). Courts use an objective standard
16 for determining “frivolousness.” This objective standard looks to whether a “competent attorney
17 admitted to practice before the district court” would have filed the document. *G.C. & K.B. Invs.,*
18 *Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003) (citation and internal quotation marks omitted).
19 “The presence of one non-frivolous claim in the complaint does not insulate the remainder of the
20 complaint from a motion for Rule 11 sanctions.” *Kinderstart.com, LLC, v. Google, Inc.*, No. C 06-
21 2057 JF(RS), 2007 WL 831811, at *1, *6 (N.D. Cal. Mar. 16, 2007) (awarding Rule 11 sanctions
22 for “factually baseless” allegations for which plaintiff relied on hearsay); *see also Ayvazian v.*
23 *Moore Law Group*, No. 12-cv-01056-ODW(Ex), 2012 WL 2411181, at *3, *4 (C.D. Cal. June 26,
24 2012) (awarding Rule 11 sanctions for complaint containing only conclusory allegations and thus
25 evidencing plaintiff had failed to conduct a “competent inquiry into law and fact before bringing
26 [the] action”). As we explain below, the Amended Complaint is the very type of pleading Rule 11
27
28

1 sanctions are designed to deter. The Court should therefore impose sanctions against Plaintiff's
2 counsel, including an award of attorneys' fees and costs.²

3 **A. The Amended Complaint Is Frivolous Because Plaintiff Alleges Federal**
4 **Jurisdiction Against The Investor Defendants Despite Pleading Only State Law**
5 **Claims Against Them.**³

6 Rule 11 sanctions are warranted because the lack of federal jurisdiction is evident on the
7 face of the Amended Complaint. *See Walker ex rel. Walker v. Norwest Corp.*, 108 F.3d 158, 161
8 (8th Cir. 1997) (imposing sanctions where lack of jurisdiction obvious on the face of the
9 complaint); *Soler v. Puerto Rico Tel. Co.*, 230 F. Supp. 2d 232, 234-35, 238 (D.P.R. 2002) (same);
10 *Archer v. Silver State Helicopters, LLC*, No. 06CV1229, 2007 WL 4258237, at *1 (S.D. Cal.
11 Dec. 3, 2007) ("The Ninth Circuit, like the Eighth Circuit, has recognized the propriety of imposing
12 Rule 11 sanctions where a plaintiff files a complaint which it must have known was completely
13 lacking a jurisdictional basis"). Even though the Amended Complaint asserts only state law claims
14 against the Investor Defendants, it nevertheless alleges the Court has federal question jurisdiction
15 pursuant to 28 U.S.C. §1331. *See* Amended Complaint ¶31. Neither Plaintiff's claim under
16 California's Unfair Competition Law nor its common law claim for unjust enrichment arises under
17 federal law or requires the resolution of a substantial question of federal law. *See K2 Am. Corp. v.*
18 *Roland Oil & Gas, LLC*, 653 F.3d 1024, 1029, 1032 (9th Cir. 2011) (dismissing complaint asserting
19 only state law claims because federal law did not create the cause of action and the plaintiff's right
20 to relief did not depend on the resolution of a substantial federal question); *Lippitt v. Raymond*
21 *James Fin. Servs.*, 340 F.3d 1033, 1046 (9th Cir. 2003) (finding UCL claim did not require
22 resolution of substantial federal question). There is no non-frivolous argument for the assertion of

23 _____
24 ² The Investor Defendants provide only a summary of the arguments as to why Plaintiff's claims are
25 frivolous and unwarranted as a matter of law. For a complete explanation of the legal flaws in
26 Plaintiff's claims, the Investor Defendants respectfully direct the Court to the Memorandum of
27 Points and Authorities filed in support of Defendants' motion to dismiss the first two claims in the
28 Amended Complaint. *See* Dkt. 91.

³ Even if the Court determines it lacks jurisdiction to substantively consider the claims in the
Amended Complaint, it still may award Rule 11 sanctions. *Buster*, 104 F.3d at 1190 (holding that
Rule 11 sanction award survives later determination that the court lacked subject-matter
jurisdiction) (citing *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992)).

1 federal question jurisdiction over indisputably *state-law* claims levied against the Investor
2 Defendants.

3 Plaintiff cannot cure this error by urging the application of supplemental jurisdiction over
4 the Investor Defendants. Plaintiff does not assert supplemental jurisdiction or plead facts to support
5 it in the Amended Complaint and therefore cannot claim supplemental jurisdiction as an alternative
6 basis for jurisdiction. Nor could Plaintiff plead supplemental jurisdiction as the federal Lanham Act
7 claim asserted in the Amended Complaint turns on a completely different set of facts than the two
8 state law claims against the Investor Defendants. *Stevedoring Servs. of Am. v. Eggert*, 953 F.2d
9 552, 558 (9th Cir. 1992) (requiring the same “nucleus of operative fact” between claims before it is
10 proper to exercise supplemental jurisdiction); *see also* Defendants’ Motion to Dismiss Claims One
11 and Two for Lack of Subject-Matter Jurisdiction and for Failure to State a Claim Upon Which
12 Relief Can Be Granted (“Defendants’ Motion To Dismiss”) at 7-10. Plaintiff therefore lacks any
13 basis for claiming federal question or supplemental jurisdiction over the Investor Defendants, and
14 cannot use the Lanham Act claim asserted against only three defendants to disguise this fact.

15 That Plaintiff’s counsel has not withdrawn or corrected the Amended Complaint despite the
16 obvious lack of federal jurisdiction has resulted in the Investor Defendants incurring fees and costs
17 for a motion to dismiss and this motion. Rule 11 sanctions are appropriate to reimburse the Investor
18 Defendants for these fees and costs, and to deter Plaintiff’s counsel from repeating this conduct.

19 **B. The Claims In The Amended Complaint Are Frivolous And Unwarranted.**

20 **1. Plaintiff’s UCL Claim Is Frivolous And Unwarranted.**

21 The claims in the Amended Complaint against the Investor Defendants are foreclosed by
22 controlling law. *See Truesdell v. S. Cal. Permanente Med. Grp.*, 209 F.R.D. 169, 177, 180 (C.D.
23 Cal. 2002) (awarding sanctions where “Plaintiff’s counsel presented absolutely no authority
24 undermining [a] clear line of decisions” barring his claims).

25 Standing under the UCL Section 17200 requires a showing of injury-in-fact and causation.
26 *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 320-21 (2011). Plaintiff cannot demonstrate
27 either. Plaintiff cannot establish the Investor Defendants caused any injury-in-fact because, *by*
28 *Plaintiff’s own admission*, the failure of FaceCash was the result of Plaintiff’s difficulties with

1 California regulatory authorities—not the result of any conduct on the part of the Investor
2 Defendants. *See Troyk v. Farmers Grp., Inc.*, 171 Cal. App. 4th 1305, 1349 (2009). Moreover,
3 Plaintiff cannot establish causation because, according to its own timeline in the Amended
4 Complaint, Plaintiff ceased operating FaceCash before the Operator Defendants even began
5 operating in an allegedly unlawful manner. *See Amended Complaint* ¶¶48, 81. As a matter of both
6 law and logic, there is no scenario under which the Investor Defendants caused any injury to
7 Plaintiff by investing in the Operator Defendants *after* FaceCash chose to cease operations.

8 Plaintiff cannot mask this deficiency by alleging the Investor Defendants are responsible for
9 the conduct of the Operator Defendants. There is no secondary liability under Section 17200. *See*
10 *Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*, 494 F.3d 788, 808-09 (9th Cir. 2007). Indeed, courts in
11 this District have rejected almost the exact claim made here. *See Clerkin v. MyLife.com, Inc.*, No.
12 11-cv-00527, 2011 WL 3607496, at *5 (N.D. Cal. Aug. 16, 2011) (finding allegations that investors
13 “furnished the means” for the allegedly wrongful conduct insufficient to state a claim under the
14 UCL).

15 Plaintiff may be attempting to impose liability on the Investor Defendants without alleging
16 facts supporting a basis to pierce the corporate veil. The Amended Complaint asserts, with no
17 supporting factual allegations whatsoever, that the Investor Defendants exercised “unbridled
18 control” over the Operator Defendants. *Amended Complaint* ¶95. This naked allegation is
19 insufficient to allege alter ego liability. *See Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001)
20 (finding no alter ego liability despite allegations of parent’s (1) involvement in its subsidiaries’
21 acquisitions, divestments, and capital expenditures; (2) formulation of general business strategies
22 applicable to its subsidiaries; (3) provision of loans to subsidiaries; (4) maintenance of overlapping
23 directors and officers; and (5) alleged undercapitalization of subsidiaries).

24 Plaintiff also does not state a claim under any of the three prongs of the UCL. First, Plaintiff
25 has failed to plead any of the Investor Defendants engaged in unlawful conduct. The Money
26 Transmission Act, which Plaintiff claims all defendants violated, by its terms applies to licensees
27 and not investors. Cal. Fin. Code §2030 (“[a] person shall not engage in the business of money
28 transmission in this state [*i.e.*, California], or advertise, solicit, or hold itself out as providing money

1 transmission in this state, unless the person is licensed or exempt from licensure . . .”). Second,
 2 Plaintiff’s assertion that the Investor Defendants violated anti-terrorism laws is simply absurd. *See*
 3 Defendants’ Motion To Dismiss at 16. Third, Plaintiff has failed to plead the existence of any
 4 unfair conduct. The only “unfairness” of which Plaintiff complains is the decision of the Investor
 5 Defendants not to invest in FaceCash. *See* Hausman Decl., Ex. A ¶64. Such allegations are
 6 deficient as a matter of law because they show no injury to competition. *See Cel-Tech Commc’ns,*
 7 *Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 186-87 (Cal. 1999) (“Injury to a competitor is
 8 not equivalent to injury to competition; only the latter is the proper focus of antitrust laws”).
 9 Finally, Plaintiff has no claim of fraudulent conduct because it has not pled a single fact showing it
 10 relied on any misleading statements. *See In re Tobacco II Cases*, 46 Cal. 4th 298, 328 (2009)
 11 (“Accordingly, we conclude that a plaintiff must plead and prove actual reliance to satisfy the
 12 standing requirement of section 17204 . . .”).

13
 14 **2. The Unjust Enrichment Claim Is Frivolous And Unwarranted Because
 Unjust Enrichment Is Not A Cause Of Action Under California Law.**

15 Plaintiff’s claim for unjust enrichment also is frivolous because California law does
 16 recognize such a claim, nor in any event, has Plaintiff pled any facts entitling it to equitable relief.
 17 *See McBride v. Boughton*, 123 Cal. App. 4th 379, 387 (2004) (“[u]njust enrichment is not a cause of
 18 action . . . or even a remedy, but rather a general principle underlying various legal doctrines and
 19 remedies”) (citation and internal quotation marks omitted); *Lauriedale Assocs., Ltd. v. Wilson*, 7
 20 Cal. App. 4th 1439, 1448 (1992) (“[t]he phrase ‘[u]njust [e]nrichment’ does not describe a theory of
 21 recovery, but an effect: the result of a failure to make restitution under circumstances where it is
 22 equitable to do so”).

23
 24 **C. Counsel For Plaintiff Failed To Perform A Reasonable Inquiry Prior To Filing
 The Amended Complaint.**

25 Plaintiff’s counsel failed to perform a “reasonable and competent inquiry before signing and
 26 filing” the Amended Complaint. *Holgate*, 425 F.3d at 676 (citation and internal quotation marks
 27 omitted). Despite having been put on notice of the legal infirmities of the original complaint in
 28 letters and telephone calls from counsel for the Investor Defendants, Plaintiff’s counsel nevertheless

1 chose to file the Amended Complaint, and in fact compounded that misconduct by dragging even
 2 more parties into this frivolous action. Had Plaintiff’s counsel conducted “[e]ven the most cursory
 3 legal inquiry” (*id.* at 677), he would have recognized that Plaintiff lacked standing to pursue a UCL
 4 claim, that the unjust enrichment claim was not a viable claim, and that these two state law claims
 5 did not provide a basis for federal jurisdiction. *See also Estate of Blue v. Cnty. of Los Angeles*, 120
 6 F.3d 982, 985 (9th Cir. 1997) (upholding award of Rule 11 sanctions where “a reasonable
 7 investigation would have revealed” the claims were barred as a matter of law); *Smith & Green*
 8 *Corp. v. Trs. of Constr. Indus. & Laborers Health & Welfare Trust*, 244 F. Supp. 2d 1098, 1108 (D.
 9 Nev. 2003) (reasonable legal investigation would have revealed claim preempted by ERISA).⁴

10 This most basic research would have informed Plaintiff’s counsel that there is no federal
 11 jurisdiction against the Investor Defendants and that the two claims against them have no merit.
 12 The Investor Defendants have been forced to incur attorneys’ fees and costs in filing a motion to
 13 dismiss the Amended Complaint and this motion because of Plaintiff’s counsel’s refusal to
 14 withdraw or correct the Amended Complaint. Plaintiff’s counsel’s conduct warrants the imposition
 15 of sanctions against him.

16 CONCLUSION AND REQUESTED REMEDY

17 The “unfounded claims [in this case] have forced a party to come into court when that party
 18 never should have been involved at all.” *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358,
 19 1367 (9th Cir 1990) (Canby, Pregerson, JJ., concurring). Here, the conduct of Plaintiff’s counsel
 20 has caused the Investor Defendants to be burdened with fees and costs in defending against the
 21 claims in the Complaint and Amended Complaint. The Investor Defendants accordingly request
 22 that the Court impose sanctions against Plaintiff’s counsel, including the reasonable attorneys’ fees
 23

24 _____
 25 ⁴ The lack of a reasonable inquiry provides evidence that this action is motivated by Plaintiff’s
 26 animus towards certain Investor Defendants because they chose not to invest in FaceCash. *See*
 27 *First Horizon Home Loans v. Doost*, No. CV09-1906 PHX DGC, 2009 WL 3756523, at *4 (D.
 28 Ariz. Nov. 9, 2009) (awarding Rule 11 sanctions and noting that “[w]hile precise motive [for
 bringing a case] is difficult to prove,” the lack of a reasonable basis for a case evidences it was
 brought for an improper purpose). Indeed, Plaintiff lashed out at some of the VC Defendant funds
 named as defendants in the original Complaint for deciding to invest in FaceCash’s alleged
 competitors. *See* Compl. ¶¶83-84.

1 and costs incurred in preparing the Investor Defendants' motion to dismiss and this motion. Those
2 fees and costs are calculated at \$58,458.44 for the Investor Defendants represented by Arnold &
3 Porter LLP (Hausman Decl. ¶¶12-14), \$60,000 for the Investor Defendants represented by
4 Goodwin Procter LLP (Declaration of Gus P. Coldabella In Support Of Investor Defendants'
5 Motion For Sanctions Under Federal Rules Of Procedure 11(b)(2) and 11(c)(2) ¶6), \$19,445 for the
6 Investor Defendants represented by Paul Hastings LLP (Declaration of Sam C. Zun In Support Of
7 Investor Defendants' Motion For Sanctions Under Federal Rules Of Procedure 11(b)(2) and
8 11(c)(2) ¶7), and \$180,000 for the Investor Defendants represented by Ropes & Gray LLP
9 (Declaration of Christopher G. Green In Support Of Investor Defendants' Motion For Sanctions
10 Under Federal Rules Of Procedure 11(b)(2) and 11(c)(2) ¶7).

ATTESTATION UNDER LOCAL RULE 5-1(i)(3)

I, Kenneth G. Hausman, am the ECF User whose ID and password are being used to file this Investor Defendants' Notice Of Motion And Motion For Sanctions Under Federal Rules Of Civil Procedure 11(b)(2) And 11(c)(2) And Memorandum Of Points And Authorities In Support Thereof. In compliance with Local Rule 5-1(i)(3), I hereby attest that Rocky C. Tsai, Thomas P. Brown and Gus P. Coldabella have concurred in this filing.

/s/ *Kenneth G. Hausman*
KENNETH G. HAUSMAN