

1 KENNETH M. WEINFELD, Of Counsel (SBN 116560)
2 **CHAUVEL & GLATT, LLP**
3 66 BOVET ROAD, SUITE 280
4 SAN MATEO, CA 94402
5 TELEPHONE: 650-573-9500
6 FACSIMILE: 650-573-9689
7 EMAIL: ken@chauvellaw.com

8 Attorneys for Defendant 121 Silicon Valley, Inc.

9 UNITED STATES DISTRICT COURT CALIFORNIA
10 NORTHERN DISTRICT OF CALIFORNIA

11 MARCO VERCH,
12 Plaintiff,
13 v.
14 121 SILICON VALLEY, INC.,
15 Defendant.

Case No. 19-cv-05098-VC

**UPDATED MOTION FOR
ADMINISTRATIVE RELIEF**

16
17 This motion for administrative relief pursuant to Local Rule 7-11 was pending for decision by
18 Magistrate Judge Hixson when plaintiff declined to consent to such jurisdiction. The motion is hereby
19 re-submitted in updated form to address a number of issues pertaining to the impropriety of plaintiff's
20 counsel appearing in this matter.
21

22 **BACKGROUND**

23 The instant action was filed on August 17, 2019. Although plaintiff's counsel, Richard
24 Liebowitz, was neither a member of the California bar nor admitted *pro hac vice* in this case, he
25 nonetheless presented himself as entitled to practice in this Court when communicating with
26 defendant's counsel. (Mr. Liebowitz actually appears to be a member of the New York bar.)
27
28
29
30
31

1 Evidently in anticipation of his imminent removal from the membership roll of this Court,¹ Mr.
2 Liebowitz applied *for pro hac vice* status in this case on October 2, 2019, and it was granted two days
3 later.
4

5 Nowhere in Mr. Liebowitz's *pro hac vice* application did he mention the disbarment proceeding
6 which was then pending before Judge Donato; nor did he disclose that he had filed almost two dozen
7 cases in the Northern District of California in recent months. Weinfield Decl. ¶ 3, Exh. B. His
8 application thus apparently violated Local Rule 11-3(b)(2), which precludes out-of-state attorneys
9 from being admitted *pro hac vice* when they are "regularly engaged in the practice of law in the State
10 of California."
11

12
13 Mr. Liebowitz has been described by a judge of the Southern District of New York as a
14 "copyright troll" after filing over 700 copyright cases in that district over a two year period. Weinfield
15 Decl. ¶ 4, Exh. C. In addition, he has been sanctioned there for engaging in various other types of
16 misconduct. One of his tactics, apparently, is to file infringement actions on behalf of clients over
17 trivial misuses of photographs found on the Internet, and then demand large sums of money in
18 settlement. *Id.* The strict liability imposed by copyright law even for minor infringements, plus the
19 statutory authorization for recovering attorneys' fees in such cases, apparently renders Mr.
20 Liebowitz's misuse of the legal system profitable.
21

22
23 After Mr. Liebowitz's reputation became known in his home judicial district, he began filing
24 similar lawsuits nationwide. *Id.* ¶ 5, Exh. D. This case is one of them. In addition to demanding tens
25 of thousands of dollars to resolve a *de minimis* alleged infringement, Mr. Liebowitz attempted to
26
27

28
29 _____
30 ¹ See Order of Disbarment dated October 7, 2019, *In the Matter of Richard P. Liebowitz*, No. 19-
31 mc-80228-JD (N.D. Cal.), a copy of which is attached as Exhibit A to the accompanying Declaration of
Kenneth M. Weinfield in Support of Updated Motion for Administrative Relief ("Weinfield Decl.") ¶
2.

1 promulgate wide-ranging discovery prior to the time permitted for doing so under Rule 26. Weinfield
2 Decl. ¶ 6. The expense of responding to such discovery – or indeed, preparing initial disclosures –
3 would dwarf any conceivable damage award in this matter. *Id.* Mr. Liebowitz’s goal, apparently, is
4 to generate large amounts of attorneys’ fees which he could then seek to recover under 17 U.S.C. §
5 505.
6

7 DISCUSSION

8 **A. Mr. Liebowitz’s Pro Hac Vice Status Should Be Revoked**

9
10 As noted above, plaintiff’s counsel has filed over 20 actions in this judicial district recently
11 despite not being a member of the California bar.² Moreover, plaintiff’s counsel filed the instant
12 action without being properly admitted to the bar of this Court, and did not seek admission *pro hac*
13 *vice* until after Judge Donato was about to remove him from the Northern District’s membership roll.
14 He then misrepresented himself to this Court by failing to disclose the extent of his practice in this
15 judicial district (and perhaps other districts around the State), which would disentitle him to *pro hac*
16 *vice* status under Local Rule 11-3(b).
17
18

19 Defendant accordingly requests that Mr. Liebowitz’s *pro hac vice* admission in this matter be
20 stricken or revoked.
21

22 **B. Service of Process on Defendant Should Be Quashed**

23
24 Prior to applying for *pro hac vice* status, Mr. Liebowitz contacted the undersigned to request
25 that defendant waive service of process in this matter. In part to foster a positive atmosphere for
26 settlement discussions while keeping costs to a minimum, the undersigned provided a signed waiver
27

28
29 ² On November 4, 2019, he stated under penalty of perjury in the proceeding before Judge
30 Donato that he has 19 cases pending in the Northern District of California. Weinfield Decl. ¶ 8, Exh.
31 F. Yet in his opposition to the initial version of the instant motion for administrative relief filed on
October 28, 2019, he claimed that these filings did not amount to being “regularly engaged” in the
practice of law in this District pursuant to Local Rule 11-3(b)(2).

1 to Mr. Liebowitz, who filed it with the Court on September 8, 2019. Weinfield Decl. ¶ 7.
2 Unbeknownst to defendant's counsel, however, Mr. Liebowitz had no right to request such a waiver
3 on plaintiff's behalf: he was neither properly admitted as a member of the bar of this Court, nor did
4 he apply for *pro hac vice* admission until a month thereafter.
5

6 Because Mr. Liebowitz procured defendant's waiver of service through false pretenses, that
7 waiver should be rescinded and service of process accordingly quashed.
8

9 **C. This Action Should be Stayed Pending Adjudication of Mr. Liebowitz's**
10 **Ability to Practice in this Court**

11 Judge Donato is apparently contemplating further action with regard to Mr. Liebowitz's ability
12 to continue practicing in this district. See Weinfield Decl. ¶ 8, Exh. E. In the interim, defendant
13 requests that this action be stayed pending resolution of the propriety of Mr. Liebowitz's appearance
14 in this matter.
15

16 **D. Mr. Liebowitz Should be Sanctioned for Abusing Court Processes**

17 Defendant has incurred at least \$3,500 in attorneys' fees to investigate and prepare the instant
18 motion, none of which would have been necessary if Mr. Liebowitz had complied with the Local
19 Rules, or voluntarily dismissed this action as requested on multiple occasions. Weinfield Decl. ¶¶ 9-
20 10. Local Rule 1-4 authorizes an award of sanctions for violating the rules of this Court.
21
22

23 **CONCLUSION**

24 For the above-stated reasons, defendant 121 Silicon Valley, Inc. respectfully requests that Mr.
25 Liebowitz's *pro hac vice* status be revoked, that defendant's waiver of service be rescinded (with
26 service itself quashed), and that further proceedings in this action be stayed until the propriety of his
27 appearance as counsel in this matter is determined. Further, Mr. Liebowitz should be sanctioned in
28

29 //

30 //

1 the amount of \$3,500, both for misrepresenting himself to the Court and compelling defendant to incur
2 significant expense in bringing these matters to the Court's attention.

3 Dated: November 8, 2019

CHAUVEL & GLATT, LLP

4
5 /s/

6 By: _____

7 Kenneth M. Weinfield
8 Attorneys for Defendant
9 121 Silicon Valley, Inc.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31