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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO
10

11 **THE PEOPLE OF THE STATE OF**
12 **CALIFORNIA ,**

13 Plaintiff,

14 v.

15 **FRANKLIN MICHAEL BENINSIG,**

16 Defendant.
17

Case No.

**DECLARATION IN SUPPORT OF
ISSUANCE OF ARREST WARRANT**

18
19
20 I, Debra Gard, declare:

21 I have been employed as a Special Agent with the California Department of Justice (DOJ)
22 since February of 2001. I am currently assigned to the DOJ Bureau of Investigation and
23 Intelligence (BII), Special Investigation Team (SIT), Sacramento Regional Office, Rancho
24 Cordova, CA. Prior to my current assignment, I worked for the Bureau of Medi-Cal Fraud and
25 Elder Abuse (BMFEA), Sacramento Regional Office, Sacramento, CA.

26 **SUMMARY**

27 From March 2004 through June 2008, Franklin M. Beninsig (Beninsig) applied for three
28 patents on behalf of clients and added himself as an inventor on the applications filed with the

1 United States Patent Office (USPTO), without the knowledge or consent of the client, and
2 contrary to the written contract. Beninsig, as the listed "inventor," also sold one of the three
3 patents for \$50,000 plus royalties, without the knowledge or consent of the client.

4 **CHARGED VICTIMS**

5 **BOB PINGREE/CHRIS BROGAN/MEDIA ADDICTION**

6 Bob Pingree (Pingree), CEO of Nexxus Systems, LLC of Scottsdale, AZ (formerly Digital
7 Concepts, Inc.), met Beninsig through Joseph Francine (Francine) in February 2004. Francine
8 introduced Beninsig to Pingree as an expert in patent law and development. Beninsig told Pingree
9 that he (Beninsig) could file the patents for Pingree through his company, Beninsig Consulting, LLC,
10 of Folsom, CA. Beninsig presented Pingree with a "Mutual Non-Disclosure Agreement (MNDA)," which
11 stated in part:

12 Section 3.7 "Rights to Improvements: If Receiving Party conceives of any invention
13 or improvement, . . . Receiving Party shall assign all rights, title and interest in that
14 invention to Disclosing Party."

15 Section 4. "Ownership of Confidential Information: The Confidential Information
16 and all confidential Materials provided by each of the parties shall remain the
17 exclusive property of Disclosing Party."

18 Section 9.7 "Nonassignability: Neither Party shall assign rights under this agreement
19 without prior written consent of the other party . . ."

20 Per the contract, Pingree is the Disclosing Party and Beninsig is the Receiving Party. Pingree signed
21 the MNDA on February 6, 2004, relying on the information contained therein as true and valid.

22 Beninsig charged Pingree \$5000.00 as his service fee to file the patent application. Pingree
23 conducted all of his business with Beninsig by phone, email or US mail. The U.S. mail address
24 Beninsig used was 13389 Folsom Boulevard #300, Folsom, CA 95630.

25 In March 2004, Beninsig filed provisional patent, #11/079030, with the USPTO, and sent
26 copies of the express mail and certified receipts to Pingree as proof. Beninsig was supposed to file
27 the full patent within 12 months of the provisional filing. Pingree received a copy of the filed
28 provisional patent from the USPTO (United States Patent Office), on which Beninsig listed himself as
a "co-inventor," in violation of the MNDA. Beninsig told Pingree that he (Beninsig) had to list

1 himself as a co-inventor in order to file the application. Beninsig promised to take his name off the
2 patent once the patent application was finalized. Pingree paid Beninsig an additional \$3,000.00 for
3 further patent work on February 18, 2005. Pingree had no further business contact with Beninsig after
4 February 2005.

5 On January 7, 2008, Pingree received notice from the USPTO stating his patent had been
6 abandoned. Pingree contacted the USPTO and requested a withdrawal of the abandonment decision.
7 Pingree received documents from the USPTO, including a "Request for Withdrawal as Attorney or
8 Agent and Change of Correspondence Address dated 3/14/2005," showing that Leland Jordan
9 (Jordan), a patent attorney retained by Beninsig, withdrew as attorney of record, and had all
10 subsequent correspondence with the USPTO sent to Beninsig. The USPTO told Pingree that Beninsig
11 filed numerous claims on the patent. Beninsig listed himself as the sole inventor in August 2007, and
12 sold the intellectual property rights of the patent to Media Addiction. Pingree never authorized
13 Beninsig's modifications to the patent nor the sale of the patent (patent application #11/079030).

14 Chris Brogan, owner of Media Addiction, stated Beninsig and Francine offered to sell
15 Pingree's software to Brogan in January 2008. Beninsig told Brogan that he (Beninsig) modified
16 Pingree's software, making him (Beninsig) a co-inventor. Beninsig told Brogan that he (Beninsig)
17 owned the patent outright because Pingree abandoned it. Brogan relied on Beninsig's fraudulent
18 statement of ownership, and on January 18, 2008, initially paid Beninsig \$30,000.00 for the patent
19 rights, with a promise of an additional \$25,000.00 when the deal was complete. Brogan contacted
20 Pingree to confirm Beninsig's claims, and learned Beninsig had "stolen" Pingree's patent. In
21 November 2008, Brogan forced Beninsig to release ownership of the patent to Pingree.¹ To date,
22 Beninsig has not repaid the initial payment of \$30,000.00.

23 **DEAN SCHILLER**

24 Dean Schiller (Schiller) of Danville, CA, met Beninsig in March 2005 through patent attorney
25 Stephen Kuhn (Kuhn). Kuhn had been working with Schiller to get a patent for Schiller's fluid

26
27 ¹ Pingree subsequently entered into a contract with Brogan for the rights to his patent.
28 Media Addiction paid Pingree a one-time fee of \$544,977.78, plus monthly maintenance fees,
upgrades and royalties.

1 dispensing system, patent application #20050199648. Kuhn fell ill, and referred Schiller to Beninsig
2 (Kuhn knew Beninsig from prior patent work). On March 10, 2005, Beninsig filed patent application
3 #20050199648, on behalf of Schiller. Without Schiller's knowledge or authorization, Beninsig added
4 his (Beninsig's) name as a co-inventor on the application.² On September 29, 2005, Schiller paid
5 Beninsig \$4500.00 for filing the patent. Schiller conducted all of his business with Beninsig and
6 Beninsig Consulting, LLC, through US Mail, email or telephone since Beninsig's business was
7 located at 13389 Folsom Boulevard, #300, Folsom, CA 95630.

8 In May 2007, while trying to license and sell the patent, Schiller discovered Beninsig's name
9 as an inventor on patent application #20050199648. Schiller contacted the USPTO, and learned
10 Leland Jordan filed a change of address form in May 2007, removing himself as attorney of record,
11 and forwarding all correspondence for Schiller's patent to Beninsig at 13389 Folsom Boulevard, Suite
12 300, Folsom, CA. In June 2007, after Schiller made repeated attempts to contact Jordan and
13 Beninsig, Schiller received an email from Beninsig. Beninsig claimed he (Beninsig) released
14 ownership of Schiller's patent, however, the USPTO did not have any record of Beninsig's release.
15 Schiller was unable to get Beninsig removed from his patent, causing Schiller lost licensing and
16 revenue³.

17 JERRY PONZO

18 In March 2008, Jerry Ponzo (Ponzo) of Colfax, CA, met Beninsig at an investor's conference
19 in the Bay area. Ponzo had a patent application pending (61/130,738), and was seeking investors for
20 his product, Ivy Screens. Beninsig told Ponzo that he (Beninsig) represented Hot Pepper Ventures
21 (HPV), a venture capital investment group, and would need to review Ponzo's patent before investing
22 in Ponzo's company. On March 26, 2008, Beninsig and Ponzo met at Beninsig's office, 1107
23 Investment Boulevard, #180, El Dorado Hills, CA, where Beninsig presented Ponzo with a "Mutual
24 Non-Disclosure Agreement (MNDA)," which stated in part:

25 Section 3.7 "Rights to Improvements: If Receiving Party conceives of any invention
26 or improvement, . . . Receiving Party shall assign all rights, title and interest in that

27 ² Schiller did not retain a copy of the contract and no contract has been found.

28 ³ Schiller had an estimated licensing and revenue loss in excess of \$5 million.

1 invention to Disclosing Party.”

2 Section 4. “Ownership of Confidential Information: The Confidential Information
3 and all confidential Materials provided by each of the parties shall remain the
4 exclusive property of Disclosing Party.”

5 Section 9.7 “Nonassignability: Neither Party shall assign rights under this agreement
6 without prior written consent of the other party . . . “

7 Per the contract, Ponzo is the Disclosing Party and Beninsig is the Receiving party. Ponzo signed the
8 MNDA on March 26, 2008, relying on the information contained therein as true and valid. Ponzo
9 paid Beninsig \$7860.00 for the patent filings.

10 On June 3, 2008, Ponzo received documents from the United States Patent Office (USPTO),
11 listing “Frank Beninsig of Folsom, CA,” as an inventor on Ponzo’s patent, application #61/130,737.⁴
12 Beninsig’s mailing address was listed as 2795 E. Bidwell Street, Suite 100, Folsom, CA 95630.
13 Beninsig told Ponzo that he (Beninsig) had to list himself as a co-inventor in order to file the
14 application. Beninsig promised to take his name off the patent once the patent application was
15 finalized. Ponzo paid Beninsig an additional \$4000.00 for further patent work and "investor"
16 meetings, but Ponzo never met any alleged "investors." Beninsig never removed his name from
17 Ponzo’s patent, and Ponzo demanded a refund of the money he paid Beninsig. Ponzo terminated his
18 agreement with Beninsig in June 2008⁵.

19 CONCLUSION


20 Your affiant is also aware that a period of time has elapsed during the onset of investigation
21 and this application for an arrest warrant. The fraudulent activities relating to the filing of the
22 patents as outlined were discovered by the victims no earlier than May 2007. (See Pen. Code, §
23 801.5 [prosecution shall be commenced within four years after the discovery of the offense].)
24 Pingree, following the January 7, 2008 notification from USPTO, discovered that Beninsig listed
25 himself as the sole owner of the patent. Schiller, while trying to license and sell the patent,
26 discovered Beninsig’s name as an inventor on the patent in May 2007.

27 ⁴ Patent #61/130.737 appears to be the same as #61/130.738.

28 ⁵ Ponzo’s final loss to Beninsig was \$12,884.00.

1 Based on the foregoing, I believe that from March 2004 through June 2008, Franklin M.
2 Beninsig (Beninsig) applied for three patents on behalf of clients and added himself as an
3 inventor on the applications filed with the United States Patent Office (USPTO), without the
4 knowledge or consent of the client, and contrary to the written contract. Beninsig, as the listed
5 "inventor," also sold one of the three patents for \$55,000 plus royalties, without the knowledge or
6 consent of the client. For those acts, I believe Beninsig is guilty of violations of Penal Code
7 sections 487, theft by false pretenses, and 503, embezzlement by agent.

8 I declare under penalty of perjury under the laws of the State of California the foregoing is
9 true and correct. Executed on September 30, 2010, at Sacramento, California.

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11 
12 SPECIAL AGENT DEBRA GARD
13 California Department of Justice
14 Bureau of Investigation and Intelligence
15 Sacramento Regional Office

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