

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT - CHANCERY DIVISION**

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AMY JOSEPH AND ROBERT O'BRIEN,  
INDIVIDUALLY AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

BENJAMIN A. PEREZ AND DARON JACOBSON,

Intervenors.

15 CH 13991

Honorable Franklin U. Valderrama  
Calendar 03

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**MEMORANDUM OPINION AND ORDER**

This cause comes to be heard on Plaintiffs, Amy Joseph and Robert O'Brien's and Defendants, Monster Inc., Best Buy Stores, L.P and BestBuy.com LLC,'s Motion for 137 Sanctions against Intervenor, Benjamin Perez. The Court, having considered the testimony of the witnesses, and having reviewed the evidence, makes the following findings of fact and conclusions of law.

**BACKGROUND AND STATEMENT OF THE CASE**

On August 25, 2015, Benjamin Perez ("Perez") filed a class action lawsuit against Monster, Inc., ("Monster") and Best Buy Stores, L.P., ("Best Buy") in the Northern District of California, alleging that Monster and Best Buy misrepresented that 1080p and 4k high-definition televisions will not work properly unless consumers use Monster brand HDMI cables over a certain bandwidth—specifically 18.0, 22.5 or 27.0 gigabits per second (Gbps). Perez allegedly purchased a Monster Brand HDMI cable with a bandwidth of 22.5 Gbps. The lawsuit is premised on Perez's allegation that, in fact, any HDMI cable with a bandwidth of just 10.2 Gbps can transmit 1080p and 4K signals perfectly.

On September 22, 2015, Amy Joseph filed a Class Action Complaint against Monster and Best Buy in the Circuit Court of Cook County. The gravamen of Joseph's Complaint is that Monster, through representations made on its packaging of certain HDMI cables, induces consumers to purchase higher bandwidth and thus, more expensive cables than they need to make their televisions work. Pl. Cmplt. ¶34. Joseph alleges that she relied on the chart that is printed on the back of the packaging of certain Monster HDMI cables in purchasing her Monster HDMI cable. Specifically, Joseph alleges that Monster misrepresented that Monster HDMI cables of 10.2 Gbps and faster are required to transmit digital signals and can do so in a superior manner compared to HDMI cables of 10.2 Gbps from other brands. Joseph sued Best Buy because Best Buy allegedly advertises and sells

Monster HDMI cables and uses the same terminology as Monster in its advertising. The following day, Joseph filed a Motion for Class Certification.

On July 12, 2016, Perez filed a Petition to Intervene and to Stay this case, alleging that he was a member of the class. The Defendants opposed Perez's Petition to Intervene, arguing, among other things, that Perez was not, in fact, a member of the class. Perez also filed an opposition to the Preliminary Approval Motion. The Court<sup>1</sup> granted Perez's Petition to Intervene, concluding that consideration of the objections would assist the court in seeking to protect the best interests of the class. The Court, however, denied Perez's Motion to Stay this action.

Plaintiffs subsequently filed motions for Class Certification and Preliminary Approval of the Class Action Settlement. Perez filed his Opposition to Plaintiffs' Motion for Preliminary Approval. On October 3, 2016, Plaintiffs and Defendants each filed separate motions to dismiss Perez from the matter based on lack of standing as an intervenor and for Illinois Supreme Court Rule 137 sanctions against Perez and his counsel. The Court ordered and subsequently held an evidentiary hearing on the Rule 137 motions for sanctions.

On November 11, 2016, Perez agreed to withdraw and be replaced by three new intervenors. On November 23, 2016, Daron Jacobson ("Jacobson"), Meredith Price and Shannon Anderson filed a Petition to Intervene. Plaintiffs and Defendants opposed the Petition. On July 25, 2017, the Court granted the Petition to Intervene in part and denied it in part, granting Jacobson leave to intervene. Jacobson thereafter adopted Perez's objection to the Motion for Preliminary Approval. The Court later granted the motions for Class Certification and Preliminary approval notwithstanding what now was Jacobson's—the new intervenor's—objections.

Interestingly, the matter presently before the Court is not the resolution of this protracted class action lawsuit which involves different jurisdictions, numerous parties and myriad issues in need of resolution. The matter presently before the Court involves two motions brought by Plaintiffs and Defendants (hereinafter "Movants") against Perez and his counsel, asserting multiple violations of Illinois Supreme Court Rule 137 through alleged false statements made in submissions to the Court. While a motion for sanctions pursuant to Rule 137 is generally a straight-forward matter, the present motion for sanctions has regrettably become one of the driving forces in this case, needlessly consuming a considerable amount of time and resources from the parties and this Court in the process.

## FINDINGS OF FACT

1. The Court held an evidentiary hearing, which commenced on August 22, 2017 and concluded on August 23, 2017.

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<sup>1</sup> At that time, the Hon. Kathleen Kennedy presided over this case. Judge Kennedy subsequently retired and the matter was assigned to this Calendar.

2. Thomas A. Zimmerman, Jr., Sharon A. Harris and Maebetty Kirby of the Zimmerman Law Offices, P.C. represent Plaintiffs.
3. Joseph E. Collins of Fox Rothschild LLP, represents Defendants.
4. Katrina Carroll and Ismael Salam of Lite DePalma Greenberg LLC, and Scott A. Bursor and Joshua D. Arisohn of Bursor & Fisher, P.A. represent Perez.
5. The following fact witnesses testified at the evidentiary hearing: Christopher Canning (“Canning”), a corporate representative for Monster; Rick Sorenson (“Sorenson”), a corporate representative for Best Buy; and Benjamin Perez.
6. In evaluating the credibility of a witness, the Court considered the witness’ memory, manner, interest, bias, qualifications, experience and any previous inconsistent statement or act by the witness concerning an issue important to the case.
7. Plaintiff Amy Joseph is an Illinois resident. Plaintiff Robert O’Brien is a California resident.
8. Perez is an individual who resides in California.
9. Defendant Monster is a Delaware corporation, Defendant Best Buy Stores, L.P. is a Virginia limited partnership, and Defendant BestBuy.com, LLC is a Virginia limited liability company.
10. During the evidentiary hearing, Perez’s counsel stipulated that Perez’s blue cable was a Monster 800HD-2M Advanced High Speed HDMI cable (hereinafter, the “Blue Cable”).
11. Monster made three versions of the 800HD HDMI cable. The first version of the 800HD HDMI cable, released in 2007 and discontinued in 2009, was an “Advanced” High Speed 6.68 Gbps HDMI cable. Monster introduced two 800HD “Ultra” High Speed HDMI cables in 2009 and 2010, neither of which resemble Perez’s Blue Cable. The Monster 800HD-2M Advanced High Speed HDMI cable has a model number of 128078-00 and a UPC Code of 50644502019.
12. Perez’s Blue Cable is 2-meters long, has a blue emblem on the connector, and a gray cable jacket that reads “800HD Advanced High Speed HDMI Cable.”
13. Monster presented an October 1, 2007 “spec sheet” of an 800HD-2M HDMI cable that matched the characteristics of Perez’s Blue Cable. The spec sheet specified a 2-meter length, a blue emblem, a gray cable jacket and the same exact “800HD Advanced High Speed HDMI Cable” lettering on the cable jacket as Perez’s cable.
14. The 800HD-2M cable contained the following manufacture date stamp on the cable jacket: “211409\_05\_YYMMDD.”
15. Perez’s Blue Cable has the following manufacture date stamp on the cable jacket: “211409\_05\_071028.”

16. Perez's Blue Cable states a manufacture date of October 28, 2007.
17. In the year 2007, the 800HD-2M HDMI cable was a 6.68 Gbps HDMI cable.
18. The component part number for the 800HD-2M HDMI cable assembly in the list of component information matches the component part number on the October 1, 2007 spec sheet.
19. All Monster Advanced High Speed HDMI cables manufactured in 2007 had an advertised bandwidth of 6.68 Gbps.
20. Monster never manufactured an 800HD Advanced High Speed HDMI cable having an advertised bandwidth other than 6.68 Gbps.
21. Monster presented two Monster 800HD Advanced High Speed HDMI cables from its inventory with an advertised bandwidth of 6.68 Gbps.
22. The 800HD-1M Advanced High Speed HDMI cable presented by Monster has the same exact lettering on the cable jacket as Perez's Blue Cable.
23. The Monster 800HD-1M Advanced High Speed HDMI cable presented by Monster has a manufacture date stamp of October 6, 2007, which is within approximately three weeks of the manufacture date stamped on Perez's Blue Cable.
24. The 800HD Advanced High Speed HDMI cables presented by Monster have the same gray cable jacket as Perez's blue cable, and have the same blue emblem as Perez's Blue Cable.
25. The packaging of both 800HD Advanced High Speed HDMI cables presented by Monster stated a bandwidth of "6.68 Gbps" on the cable packaging.
26. Perez's blue cable has an advertised bandwidth of 6.68 Gbps.
27. Best Buy presented retail sales transaction records showing two sales of the Monster 800HD-2M HDMI cables with a UPC Code of 50644502019. The records do not indicate which version of the Monster 800HD-2M cable Best Buy sold.
28. The two Monster 800HD-2M HDMI cable sales occurred in 2012 and 2013 and originated from Best Buy retail stores located in Indiana and Michigan, respectively.
29. The Best Buy SKU associated with the 800HD-2M HDMI cable is listed as a "special order" item.
30. The "special order" designation indicates that the 800HD-2M cable was not stocked on the shelves of Best Buy's retail stores

31. Best Buy's inventory records admitted into evidence show that its Orange, California stores did not have the 800HD-2M cable available in the daily snapshot of the inventory in the first quarter of 2014.
32. Best Buy's store display planograms admitted into evidence show that in the first quarter of 2014, Best Buy was only displaying the Monster UltraHD line of HDMI cables on its shelves of the Orange, California retail stores.
33. Perez presented no evidence at the evidentiary hearing to support the statements made by Perez that his Monster 800HD-2M Advanced High Speed HDMI cable has an advertised bandwidth exceeding 10.2 Gbps.
34. Perez did not present any examples of Monster 800HD Advanced High Speed HDMI cables with advertised bandwidths exceeding 10.2 Gbps.
35. Perez presented no evidence that there is any existence of similar Monster 800HD Advanced High Speed HDMI cables with advertised bandwidths exceeding 10.2 Gbps.
36. Perez testified that he did not know the bandwidth of his Blue Cable.
37. Perez did not present a Best Buy receipt or other proof of purchase for his Monster 800HD-2M Advanced High Speed HDMI cable.
38. Perez did not present any evidence of a Monster 800HD-2M Advanced High Speed HDMI cable ever being sold at an Orange, California Best Buy store or any other Best Buy store.
39. Perez presented no evidence that Best Buy stocked Monster's 800HD-2M Advanced High Speed HDMI cables in its Orange, California retail stores or any other Best Buy retail stores.
40. Perez's Blue Cable is an 800HD-2M Advanced High Speed HDMI cable with an advertised bandwidth of 6.68 Gbps.
41. During the Hearing, Perez testified that in 2014, he purchased a 1000HD HDMI Monster cable from a Best Buy store in Orange, California.
42. Perez testified that his red cable is a 1000HD cable (the "Red Cable").
43. Perez's counsel stipulated that Perez's Red Cable is 1-meter long.
44. Monster made three versions of the 1000HD HDMI cable. The first version of the 1000HD HDMI cable, released in 2007 and discontinued in 2009, was an "Ultra" High Speed 10.2 Gbps HDMI cable.

45. Monster introduced two "Ultimate" High Speed HDMI cables in 2009 and 2010, neither of which resemble Perez's Red Cable. The 2010 version was an "Ultimate High Speed" 1000HD cable with a gold emblem, a V-grip connector, and Ethernet capabilities.
46. The Monster 1000HD-1M Ultra High Speed HDMI cable has a model number of 127654-00 and a UPC Code of 50644449017.
47. Perez's Red Cable has a red emblem on the connector, a black cable jacket, and states "MONSTER CABLE · MONSTER ADVANCED for HDMI · Ultra-High Speed High Definition Multimedia Interface" on the cable jacket.
48. Monster presented a spec sheet dated October 2, 2007, containing a "spec drawing" of a 1000HD-1M HDMI cable that matched the characteristics of Perez's Red Cable. The spec drawing specified a one meter length, a red emblem, a black cable jacket and the same exact "MONSTER CABLE · MONSTER ADVANCED for HDMI · Ultra-High Speed High Definition Multimedia Interface" lettering on the cable jacket as Perez's Red Cable.
49. The 1000HD-1M cable spec drawing contained the following manufacture date stamp on the cable jacket: "211409\_05\_YYMMDD."
50. Perez's Red Cable has the following manufacture date stamp on the cable jacket: "211409\_05\_071102."
51. Perez's Red Cable states a manufacture date of November 2, 2007.
52. In 2007, the 1000HD-1M Ultra High Speed HDMI cable was a 10.2 Gbps HDMI cable.
53. The component part number for the 1000HD-1M HDMI cable assembly in the list of component information matches the component part number on the October 2, 2007 spec sheet.
54. All Monster Ultra High Speed HDMI cables manufactured in 2007 had an advertised bandwidth of 10.2 Gbps.
55. Monster never manufactured a 1000HD Ultra High Speed HDMI Cable having an advertised bandwidth other than 10.2 Gbps.
56. Monster presented two Monster 1000HD-1M Ultra High Speed HDMI cables from its inventory with an advertised bandwidth of 10.2 Gbps.
57. The 1000HD-1M Ultra High Speed HDMI cable presented by Monster has the same exact lettering on the cable jacket as Perez's Red Cable.
58. The Monster 1000HD-1M Advanced High Speed HDMI cable Monster presented has a manufacture date stamp of November 13, 2007, which is within two weeks of the manufacture date stamped on Perez's Red Cable.

59. The 1000HD-1M Ultra High Speed HDMI cables presented by Monster have the same black cable jacket as Perez's Red Cable, and have the same red emblem as Perez's Red Cable.
60. Perez's Red Cable matches the 1000HD-1M Ultra-High Speed HDMI cables Monster presented.
61. The 1000HD-1M Ultra-High Speed 10.2 Gbps HDMI cable is the only cable offered by Monster with a 1-meter length, a 2007 date stamp, a red emblem, and the script on Perez's Red Cable.
62. The packaging of both 1000HD-1M Ultra High Speed HDMI cables presented by Monster stated a bandwidth of "10.2 Gbps" on the packaging.
63. The packaging of both 1000HD-1M Ultra High Speed HDMI cables presented by Monster stated a "Cable for Life" replacement offer. The offer states that Monster will for the lifetime of the cable exchange for a higher bandwidth cable if the consumer's components require a higher bandwidth. If a consumer buys an HDMI cable with a Cable For Life replacement offer, that consumer never needs to buy another higher speed cable.
64. HDMI Cables with 22.5 Gbps technology did not exist in 2007.
65. 4K televisions did not exist in 2007.
66. Monster did not manufacture or sell a 22.5 Gbps HDMI cable in 2007—the year that Perez's Red Cable was manufactured.
67. The Monster 1000HD-1M Advanced High Speed HDMI cable presented by Monster has a manufacture date stamp of November 13, 2007, which is within two weeks of the manufacture date stamped on Perez's Red Cable.
68. The 1000HD-1M Ultra High Speed HDMI cables presented by Monster have the same black cable jacket as Perez's red cable, and have the same red emblem as Perez's Red Cable.
69. Perez's Red Cable is an exact match to the 1000HD-1M Ultra-High Speed HDMI cables presented by Monster.
70. The 1000HD-1M Ultra-High Speed 10.2 Gbps HDMI cable is the only cable offered by Monster with a 1-meter length, a 2007 date stamp, a red emblem, and the script on Perez's Red Cable.
71. The packaging of both 1000HD-1M Ultra High Speed HDMI cables presented by Monster stated a bandwidth of "10.2 Gbps" on the packaging.
72. The packaging of both 1000HD-1M Ultra High Speed HDMI cables presented by Monster stated a "Cable for Life" replacement offer. The offer states that Monster will for the lifetime of the cable exchange for a higher bandwidth cable if the consumer's components require a higher bandwidth.

73. Monster's bandwidth charts discussing 4K televisions came out in 2013.
74. Monster released the "UltraHD" line of HDMI cables in response to 4K televisions.
75. Perez's Red Cable is a 2007-model 1000HD-1M Ultra High Speed HDMI cable with an advertised bandwidth of 10.2 Gbps.
76. Monster did not manufacture or sell a 22.5 Gbps HDMI cable in 2007—the year that Perez's Red Cable was manufactured.
77. 22.5 Gbps technology did not exist in 2007.
78. Perez presented no evidence that Monster manufactured, advertised or sold a 1000HD-1M HDMI cable having an advertised bandwidth of 22.5 Gbps.
79. Sorenson testified that the Best Buy stores in Orange California did not stock 1000HD-1M cables on or about March 2014, as these cables were designated as "special order items," which are items not kept in the store's inventory.
80. Sorenson also testified that Best Buy sold 57 1000HD-1M cables in its retail stores nationwide, and that none of these sales occurred in Orange, California.
81. The Court finds that Sorenson was a credible witness.
82. Perez did not present any examples of Monster 1000HD Ultra High Speed HDMI cables with advertised bandwidths of 22.5 Gbps.
83. Perez presented no evidence showing that Monster 1000HD Ultra High Speed HDMI cables with advertised bandwidths of 22.5 Gbps exist.
84. Perez did not present a Best Buy receipt or other proof of purchase for his Monster 1000HD-1M Ultra High Speed HDMI cable.
85. Perez did not identify any evidence of a Monster 1000HD-1M Ultra High Speed HDMI cable ever being sold at an Orange, California Best Buy store.
86. Perez presented no evidence showing that Best Buy stocked Monster 1000HD-1M Ultra High Speed HDMI cables in its Orange, California retail stores or any other Best Buy retail store.
87. Perez testified that it was his recollection that he purchased his Red Cable at a Best Buy store in Orange, California in 2014.
88. Perez testified that he did not have any documents reflecting his purchase of the Red Cable, only the cable itself.



89. In 2008, Perez purchased a 1000HD-1M Ultra High Speed HDMI cable from Amazon for approximately \$61.
90. Perez testified that his Red Cable is a Monster 1000HD-1M HDMI cable.
91. Perez testified that his Red Cable and his Blue Cable were not the first Monster HDMI cables he purchased, contradicting his deposition testimony.
92. Perez testified that the chart in the back of his Red Cable packaging led him to believe he needed a 22.5 Gbps HDMI cable.
93. Perez also testified that he was not sure if he formed a belief that he only needed a 10.2 Gbps cable prior to filing the California Action, which contradicted his deposition testimony.
94. Based on the inconsistencies in Perez's testimony as to when he formed his belief that he only needed a 10.2 Gbps HDMI cable, Perez was impeached.
95. Perez testified that he inspected the entirety of his Red Cable prior to filing the California Action, which was contradicted by his testimony that the Red Cable was installed behind drywall and that he was unable to retrieve the cable without breaking through the drywall.
96. Based on the inconsistencies in Perez's testimony that he was able to inspect his Red Cable thoroughly although the cable at the time of the alleged inspection was, according to Perez, installed behind drywall and could only be retrieved by breaking through the drywall, Perez was impeached.
97. The Court, based on Perez's demeanor, memory and manner, as well as the inconsistencies in his testimony and impeachment, finds that Perez was not a credible witness

#### **CONCLUSIONS OF LAW**

98. Illinois Supreme Court Rule 137 states in relevant part:

- (a) Signature requirement/certification. Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated... The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation... If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person

who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee.

Il. Sup. Ct. R. 137(a).

99. “Pursuant to Rule 137, the trial court may impose sanctions against a party or his counsel for filing a motion or pleading that is not well grounded in fact, not supported by law, or lacks a good-faith basis for modification, reversal, or extension of the law, or is interposed for any improper purpose.” *Whitmer v. Munson*, 335 Ill. App. 3d 501, 513-14 (1st Dist. 2002). Rule 137 is penal in nature, and as such, it must be strictly construed. *Id.* The rule is not intended to penalize litigants and their counsel because they were zealous, yet unsuccessful in their efforts. *Id.* “The rule makes clear that the signature of a litigant or an attorney on a pleading is a certificate that the signing party has read the pleading and made ‘reasonable inquiry’ into the facts alleged. *Pritzker v. Drake Tower Apts.*, 283 Ill. App. 3d 587, 590 (1s Dist. 1996). As such, the court must evaluate the conduct of a party under a standard which takes into account “reasonableness under the circumstances as they existed at the time of the filing.” *Id.* However, “it is not sufficient that the signing party ‘honestly believed’ his or her case was well grounded in fact or law.” *Whitmer*, 335 Ill. App. 3d at 514. The movant bears the burden of proving that (1) a party made false statements in a pleading, and (2) that the untrue statements were made without reasonable cause, and (3) without reasonable inquiry. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d. 214, 217 (1s Dist. 2007); *Pritzker*, 283 App. 3d at 590. The decision of imposing sanctions under the rule is within the sound discretion of the trial court. *Pritzker*, 283 Ill. App. 3d at 590.

**A. Whether Rule 137 Applies to Oral Statements**

100. As a preliminary matter, the Court notes that Movants assert that Rule 137 is applicable to false statements, whether such statements are written or oral, and invites the Court to apply the rule to sanction Perez based on statements which Perez’s counsel made before the Court citing, *Lewy v. Koeckritz Int’l Inc.*, 211 Ill. App. 3d 330, 344 (1st Dist. 1991). Perez, on the other hand, asserts that Rule 137 is only applicable to written representations, not oral statements, citing *Gershak v. Feign*, 317 Ill. App. 3d 14, 23 (1st Dist. 2000). The Court agrees with Perez. Rule 137 explicitly applies to the “filing [of] a motion or pleading.” Il. Sup. Ct. R. 137. While the court in *Lewy* held that Rule 137 applies to statements made without factual or legal support “whether the assertions are written or oral” the court did not state that Rule 137 applies to any statement made in court. *See Lewy*, 211 Ill. App. 3d at 344 (citing *Modern Mailing Systems, Inc. v. McDaniels*, 191 Ill. App. 3d 347, 351 (4th Dist. 1989)). The court in *Lewy* cited to *McDaniels*, which stands for the proposition that Rule 137 applies specifically to oral motions made in court which “seek[] relief from the court just as surely as a signed, written motion.” *McDaniels*, 191 Ill. App. 3d 347 at 351. As such, the Court may only apply Rule 137 to statements made in open court only insofar as those statements constitute oral motions before the Court. This interpretation is consistent with the plain language of the rule, which

states that because it is penal in nature it must be strictly construed. *Whitmer*, 335 Ill. App. 3d at 513-14.

101. As such, the Court rejects Movants' invitation to apply the rule to oral statements made in open court which did not constitute oral motions by Perez's counsel. Therefore, the Court will not address Movant's arguments that Perez violated Rule 137 when his counsel made an allegedly false statement before the Court on October 3, 2016.
102. As a further preliminary issue, Perez argues that Rule 137 only applies to statements which are made for an improper purpose, citing *Casablanca Lofts LLC v. Blauvise*, 2014 IL App 132234-U, ¶ 28. As to this, the Court notes, as do Movants in their "Rebuttal" brief, that it is improper to cite unpublished opinions as they do not constitute binding precedent. Since this Court has already admonished Perez about the improper citation to unpublished opinions<sup>2</sup> in its March 6, 2018 Memorandum Opinion and Order, it will not do so again. Additionally, the Court rejects Perez's assertion that Rule 137 sanctions may *only* be imposed when a false statement is made for an improper purpose, as this interpretation of the rule is not supported by its plain language. *See Solon v. Midwest Med. Records Ass'n*, 236 Ill. 2d 433, 440 (2010) (in interpreting a statute or rule, the court must apply it as written through its plain and ordinary meaning.).
103. Joseph further argues that Rule 137 is only applicable to statements which are material to the underlying claim or allegation, citing *First of Am. Trust Co. v. First Illini Bancorp, Inc.*, 289 Ill. App. 3d 276, 288 (3d Dist. 1997); and *Deutsche Bank Nat. Tr. Co v. Ivicic*, 2015 IL App (2d) 140970, ¶24. The Court agrees with Joseph that the trial Court, in assessing the reasonableness of the allegations, must consider whether the allegations are material to the cause. *Deutsche Bank Nat. Tr. Co v. Ivicic*, 2015 IL App (2d) 140970, ¶24.
104. Therefore, in addressing the merits of the present Motion, the Court must determine as a threshold matter what constitutes a material statement in this case for purposes of Rule 137.

**B. Material Statement for Purposes of Rule 137**

105. Illinois courts define a "material statement" as a statement that "tends to prove or disprove an issue in the case," and which "influence[d], or could have influenced the trier of fact." *See People v. Acevedo*, 275 Ill. App. 3d 420, 423 (2d Dist. 1995) (discussing what constitutes a "material statement" within the context of perjury). As such, the materiality of a statement is established in reference to the issues in the case. *Id.*
106. The crux of Movants' arguments is that Perez never had standing to intervene in the matter. As such, any alleged false statement Perez made which relates to whether Perez was a class member is a material statement for purposes of Rule 137. To determine the materiality of the allegedly false statements Perez made, the Court must first examine the proposed class

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<sup>2</sup> Under Rule 23(e), an unpublished order of the appellate court has no precedential value and may not be cited by any party except to support contentions such as double jeopardy, *res judicata*, collateral estoppel and law of the case. *Lara v. Hyundai Motor Am.*, 331 Ill. App. 3d 53, 63 (2d Dist. 2002).

definition. The proposed class definition is: “*all persons who purchased a Monster HDMI Cable advertised as having a bandwidth exceeding 10.2 Gbps in the United States since August 25, 2011 to the date of Preliminary Approval of the Settlement.*” Movants, among other things, assert that Perez violated Rule 137 when he allegedly made false statements that: (1) he purchased his Blue Cable from Best Buy in 2014; (2) his Red Cable has an advertised bandwidth of 22.5 Gbps; (3) his Red Cable was sold in packaging advertising bandwidths of 22.5 Gbps for 4K televisions; (4) he purchased his Red Cable from Best Buy in 2014; (5) that he paid \$189 for his Red Cable; (6) that his Red Cable was installed behind drywall in his apartment; and (7) that he is a class member and has standing to intervene.

107. The Court will now address: (1) the materiality of Perez’s statements and if material, (2) whether they constitute false statements for purposes of Rule 137.

**C. Perez’s Statement that he Purchased his Blue Cable From Best Buy in 2014**

108. Perez’s alleged purchase of his Red Cable is his basis to assert standing in the present action. His Blue Cable is not. As such, the Court finds that Perez’s statement that he purchased the Blue Cable from Best Buy in 2014 is immaterial for purposes of the present motion for Rule 137 sanctions and will not address it.

**D. Perez’s Statement that he Purchased his Red Cable from Best Buy in 2014**

109. As a threshold issue, the Court notes that Movants argue that they offered evidence at the hearing that Perez purchased his Red Cable—a 1000HD Monster HDMI cable from Amazon in 2008. The evidence in question was a print out from a search performed by Amazon. Hrg. Trscrpt. at 105. Perez did not object to the print out of the Amazon search, and it was admitted into evidence. Hrg. Trscrpt. at 106.
110. In support of his Petition to Intervene, Perez submitted his Complaint in the California Action which states that he purchased a “Monster ultra high speed HDMI cable from Best Buy in 2014.”
111. As noted *supra*, Plaintiffs define the proposed class as follows: “All persons who purchased a Monster HDMI Cable advertised as having a bandwidth exceeding 10.2 Gbps in the United States since August 25, 2011.” Pl. Cmplt., ¶39. Plaintiffs further define a proposed subclass as: “All persons who purchased from Best Buy a Monster HDMI Cable advertised as having a bandwidth exceeding 10.2 Gbps in the United States since August 25, 2011. Pl. Cmplt., ¶39.
112. Also as previously noted, this assertion in the California Action was the basis for Perez’s intervention into the present case and as such, the Court finds that this statement is material for purposes of Rule 137. Next, the Court addresses whether (1) this statement was false and whether (2) it was made without reasonable cause and without reasonable inquiry.
113. At the evidentiary hearing, Perez acknowledged that his Red Cable is a Monster 1000HD-1M HDMI cable with a bandwidth of 10.2 Gbps and that it had a manufacturing stamp of

November 13, 2007. Best Buy's witness, Sorenson, testified that the Best Buy store in Orange, California never stocked the 1000-1M cable. Best Buy also presented evidence that Best Buy only sold 57 1000HD-1M HDMI cables in its retail stores nationwide, and that none of those sales occurred in the Orange, California store where Perez alleges he purchased his Red Cable. Further, Best Buy presented evidence that the Monster 1000-1M cable was designated as a "special order item," and was not in-stock on the shelves of the Orange, California store.

114. The only evidence offered in support of Perez's assertion that he purchased the Red Cable at the Orange California store in 2014 is his own testimony. During the Hearing, Perez testified that he did not have any documents to support his assertion that he purchased his Red Cable from the Best Buy in Orange, California. Perez testified that he "remembered" purchasing the Red Cable there. Hrng. Trnsript. at 69-70.
115. Perez argues that he did not have the personal knowledge necessary to identify his Red Cable as the cable subject to the class action. According to Perez, "Perez [did not] have access to Monster's private internal documents... required to identify the cable." Perez's. Brief at 15. As such, contends Perez, sanctions are not warranted. The Court disagrees.
116. Leaving aside the fact that the Court has found Perez not to be a credible witness, Perez's entire basis to assert that his Red Cable was the cable at issue in the action is that he "remembered" purchasing the cable at the Best Buy in Orange, California in 2014. As noted, under Rule 137, it is not sufficient that a party "honestly believed" that his statement was well grounded in fact or law.
117. Perez asserting that he has class standing based on "remembering" that he purchased the cable at a specific date and location, without any support for such assertion other than his memory—which is contradicted by significant amount of evidence and testimony proffered by the Movants—is insufficient for purposes of Rule 137. As such, having found that Perez was not a credible witness, and having reviewed and evaluated the evidence, the Court finds that Perez's statement that he purchased his Red Cable at a Best Buy in Orange, California in 2014 to have been made without reasonable cause and without reasonable inquiry, that the statement was not well-grounded in fact, and as such, that this statement was made in violation of Rule 137.

**E. Perez's Statement That His Red Cable had an Advertised Bandwidth of 22.5 Gbps**

118. Movants argue that the issue is whether Perez made a false statement when he stated in his declaration that his Red Cable has an advertised bandwidth of 22.5 Gbps. Perez, on the other hand, asserts that the issue is whether the Red Cable advertises a bandwidth greater than 10.2 Gbps, as per the class definition in this matter. The Court agrees with Movants. The class definition is irrelevant for purposes of whether Perez falsely stated that his Red Cable had an advertised bandwidth of 22.5 Gbps.
119. In Perez's declaration which is attached to the Complaint, he states that on "personal knowledge" his Red Cable was advertised as having a bandwidth of 22.5 Gbps. Canning,

however, testified that Perez's Red Cable had a bandwidth of 10.2 Gbps as stated in the packaging, not 22.5 Gbps. Perez counters that Perez testified that the packaging of the Red Cable contains a "greater than" sign and also states that it has "a bandwidth of greater than 10.2 Gbps."

120. The Court finds that Perez's statement that his Red Cable was advertised as having a bandwidth of 22.5 Gbps to be a false statement made without reasonable inquiry. Even if, as Perez argues, the packaging of his Red Cable could be construed as stating that the cable has a bandwidth "greater than 10.2 Gbps," this alone is insufficient to conclude that the cable has a bandwidth of 22.5 Gbps.
121. Therefore, the Court finds that Perez's statement that his Red Cable had an advertised bandwidth of 22.5 Gbps was not well-grounded in fact, was made without reasonable cause and without reasonable inquiry, and constitutes a violation of Rule 137.

**F. Perez's Statement that his Red Cable was Installed Behind Drywall**

122. Movants argue that Perez's statement in support of his intervention as to his intentions when he purchased his Red Cable were false. Perez stated, in support of his intervention, that he was "hoping to future-proof his purchase so that he would not have to buy another expensive HDMI cable or have to break open the drywall where his HDMI cable would be installed to switch out the cable when he eventually got a 4K television." This representation by Perez and his counsel led the Court to order a home inspection, which revealed that the Red Cable was not behind the drywall. Perez explained this discrepancy by stating that at the time he filed the California Action, the Red Cable was installed behind the drywall at his rental apartment, but at the time the inspection took place, the moving company had broken the drywall and removed the Red Cable. Movants assert that this statement by Perez is false and that this statement is material because it was the reason for the court-ordered inspection of Perez's apartment.
123. As best as the Court can ascertain, Perez's position is two-fold: first, that Perez did not falsely state that his Red Cable was behind drywall; and second, that even if the statement is false it is not material and the Court should not impose sanctions. As to the first point, Perez notes (1) that there was no testimony from another witness contradicting Perez's assertion that the Red Cable was behind drywall; and (2) that the cable packaging states that it is for "In-Wall Use" and as such, Perez had a plausible reason for placing the Red Cable behind drywall. As to the second point, Perez argues that because the statement originated from the California Action and was only used as an exhibit in this case it is not material.
124. During cross examination by Defendants' counsel, Perez maintained that the Red Cable was installed behind drywall at his rental unit when he filed the California Action. At the same time, however, Perez testified that prior to the filing of the California Action, he inspected the entire length of the Red Cable "tip to tip." The two statements are inconsistent. If the cable was installed behind the drywall such that it would require breaking the drywall to remove it, it was

impossible for Perez to have examined the Red Cable “tip to tip” prior to filing the California Action.

125. As such, the Court finds that Perez’s assertion that his Red Cable was installed behind drywall was not well-grounded in fact, was made without reasonable inquiry or reasonable cause and constitutes a violation of Supreme Court Rule 137.

**G. Other Arguments Raised by Movants in Support of Sanctions Against Perez**

126. Having found three instances of violations of Illinois Supreme Court Rule 137, the Court declines to address the remaining arguments in support of sanctions against Perez, namely: (1) Perez’s statement that he is a Class Member with standing to intervene; (2) Perez’s statement that his Red Cable was sold in packaging advertising bandwidths of 22.5 Gbps for 4k televisions; and (3) Perez’s statement that he paid \$189 for his Red Cable.

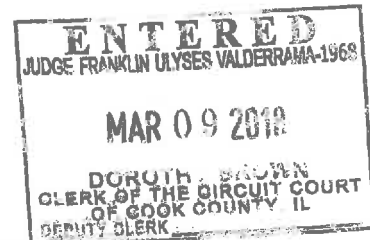
**H. Conclusion**

127. The Court finds that Perez’s statements that (1) he purchased his Red Cable from Best Buy in 2014; (2) that his Red Cable had an advertised bandwidth of 22.5 Gbps; and (3) that his Red Cable was installed behind drywall in his apartment are false statements pursuant to Rule 137 and therefore, that sanctions against Perez are warranted.

128. The matter is set for status on April 30, 2018 at 10:00 a.m. in Room 2402.

SO ORDERED.

ENTERED:



Franklin U. Valderrama  
Judge Presiding

DATED: March 9, 2017