

OCTANE AND 35 USC 285

Citation	Attorney's Fee's Awarded	Attorney's Fees NOT Awarded
<u>Fair Wind Sailing, Inc. v. Dempster</u> , 764 F.3d 303, 306, 2014 WL 4358471 (3d Cir. 2014)		We therefore remand the fee dispute for further proceedings.
<u>Icon Health &amp; Fitness, Inc. v. Octane Fitness, LLC</u> , 2011-1521, 2014 WL 4194609 (Fed. Cir. Aug. 26, 2014)		we vacate the district court's denial of Octane's motion to find the case exceptional and to award attorney fees pursuant to 35 U.S.C. § 285 and remand for further consideration of that issue
<u>Wiley v. RockTenn CP, LLC</u> , 4:12-CV-00226-KGB, 2014 WL 4929447 (E.D. Ark. Sept. 30, 2014)		RockTenn's motion for attorneys' fees is denied
<u>Gametek LLC v. Zynga, Inc.</u> , CV 13-2546 RS, 2014 WL 4351414 (N.D. Cal. Sept. 2, 2014)		In that the "exceptional" label is not warranted here even under the more expansive standard articulated by the Supreme Court in <i>Octane Fitness, LLC v. ICON Health &amp; Fitness, Inc.</i> , 134 S.Ct. 1749 (2014), defendants' motions must be denied
<u>Apple Inc. v. Samsung Electronics Co., Ltd.</u> , 11-CV-01846-LHK, 2014 WL 4145499 (N.D. Cal. Aug. 20, 2014)		Court DENIES Apple's motion for attorneys' fees
<u>Yufa v. TSI Inc.</u> , 09-CV-01315-KAW, 2014 WL 4071902 (N.D. Cal. Aug. 14, 2014)	the Court GRANTS IN PART AND DENIES IN PART Defendant TSI Incorporated's motion for attorneys' fees and non-taxable costs, and awards TSI attorneys' fees in the amount of \$154,702.75 and non-taxable costs in the amount of \$4,343.05 for work performed between September 9, 2013 and March 7, 2014.	
<u>Kilopass Tech. Inc. v. Sidense Corp.</u> , C 10-02066 SI, 2014 WL 3956703 (N.D. Cal. Aug. 12, 2014)	the Court GRANTS defendant's renewed motion for attorney's fees	
<u>EON Corp.IP Holdings LLC v. Cisco Sys. Inc.</u> , 12-CV-01011-JST,		After considering the totality of the circumstances, the Court

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2014 WL 3726170 (N.D. Cal. July 25, 2014)		will exercise its discretion not to award attorney's fees under to 35 U.S.C. § 285.
<u>CreAgri, Inc. v. PinnacLife, Inc.</u> , 11-CV-6635-LHK, 2014 WL 2508386 (N.D. Cal. June 3, 2014)		the Court DENIES both of PinnacLife's motions for attorneys' fees
<u>Romag Fasteners, Inc. v. Fossil, Inc.</u> , 3:10CV1827 JBA, 2014 WL 4073204 (D. Conn. Aug. 14, 2014)	Plaintiff is entitled to recover its reasonable attorney's fees and costs in this case pursuant to the Patent Act and CUTPA	
<u>Summit Data Sys., LLC v. EMC Corp.</u> , CV 10-749-GMS, 2014 WL 4955689 (D. Del. Sept. 25, 2014)	the court will grant NetApp's motion and order Summit to pay attorneys' fees and costs	
<u>Intellect Wireless, Inc. v. Sharp Corp.</u> , 10 C 6763, 2014 WL 2443871 (N.D. Ill. May 30, 2014)	awarding attorneys' fees to competitors was warranted	
<u>Classen Immunotherapies, Inc. v. Biogen Idec, CIV. WDQ-04-2607</u> , 2014 WL 2069653 (D. Md. May 14, 2014)	Accordingly, Biogen is entitled to an award of reasonable attorneys' fees and expenses incurred after that date	
<u>LendingTree, LLC v. Zillow, Inc.</u> , 3:10-CV-00439-FDW, 2014 WL 5147551 (W.D.N.C. Oct. 9, 2014)		Zillow's motion for attorneys' fees is DENIED. Court denies that portion of NexTag's motion seeking to hold LendingTree's counsel jointly liable for any award of attorneys' fees.
<u>Precision Links Inc. v. USA Products Grp., Inc.</u> , 3:08-CV-00576-MR, 2014 WL 2861759 (W.D.N.C. June 24, 2014)	Defendants are hereby awarded the sum of One Hundred and Sixty-Five Thousand Two Hundred and Sixty Dollars and Seventy Cents (\$165,260.70) for their reasonable attorneys' fees; an award of pre-judgment interest thereon in the amount of 8% per annum, through and including July 14, 2011; an award of post-judgment interest pursuant to 28 U.S.C. § 1961 from July 14, 2011; and an award of costs in the amount of	

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	Five Hundred and Eighteen Dollars and Seventy Cents (\$518.70).	
<u>Home Gambling Network Inc., v. Piche</u> , 2:05-CV-610-DAE, 2014 WL 2170600 (D. Nev. May 22, 2014)	the Court <b>GRANTS</b> Defendants' Motion for Attorneys' Fees and Costs	
<u>Rates Tech. Inc. v. Broadvox Holding Co. LLC</u> , 13 CIV. 0152 SAS, 2014 WL 5023354 (S.D.N.Y. Oct. 7, 2014)		Broadvox's motion for attorneys' fees and nontaxable costs against RTI is <b>DENIED</b>
<u>Lumen View Tech., LLC v. Findthebest.com, Inc.</u> , 13 CIV. 3599 DLC, 2014 WL 2440867 (S.D.N.Y. May 30, 2014)	Motion for Declaration of Exceptional Case and Award of Fees and Nontaxable Expenses is granted	
<u>Falana v. Kent State Univ.</u> , 5:08 CV 720, 2014 WL 3788695 (N.D. Ohio July 31, 2014)	plaintiff's motion for attorney fees, and supplemental motion <sup>1</sup> for attorney fees, are <b>GRANTED</b>	
<u>H-W Tech., Inc. v. Overstock.com, Inc.</u> , 3:12-CV-0636-G BH, 2014 WL 4378750 (N.D. Tex. Sept. 3, 2014)		defendant's motion for exceptional case finding and award of attorneys' fees and expenses, filed November 1, 2013 (docket entry 73) is <b>DENIED</b>
<u>Bianco v. Globus Med., Inc.</u> , 2:12-CV-00147-WCB, 2014 WL 1904228 (E.D. Tex. May 12, 2014)		Dr. Bianco's inventorship claim was not exceptional within the meaning of section 285, as construed by the Supreme Court in <i>Octane Fitness</i> , and that Globus is not entitled to an award of attorney fees under section 285. The motion for reconsideration is therefore denied
<u>Homeland Housewares, LLC v. Hastie2Market, LLC</u> , 2013-1537, 2014 WL 4400184 (Fed. Cir. Sept. 8, 2014)	it was within district court's discretion to award attorney fees to competitor, and 2 it was within district court's discretion to award \$253,777.37 in attorney fees	
<u>Linex Technologies, Inc. v. Hewlett-Packard Co.</u> , C 13-159	An award of attorneys' fees on the spread spectrum claims is	

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CW, 2014 WL 4616847 (N.D. Cal. Sept. 15, 2014)	warranted	
<u>IPVX Patent Holdings, Inc. v. Voxernet, LLC</u> , 5:13-CV-01708 HRL, 2014 WL 2772297 (N.D. Cal. June 18, 2014)		court denies the motion to post an undertaking in the amount of \$749,000 to cover attorney's fees
<u>Shelby Cnty., Alabama v. Holder</u> , CV 10-651 (JDB), 2014 WL 2200898 (D.D.C. May 28, 2014)		the Court will deny Shelby County's motion for attorney's fees
<u>Chalumeau Power Sys. LLC v. Alcatel-Lucent</u> , CV 11-1175-RGA, 2014 WL 4675002 (D. Del. Sept. 12, 2014)	Defendants' Motion for Attorneys' Fees and Costs (D.I.158) is <b>GRANTED</b>	
<u>Gevo, Inc. v. Butamax Advanced Biofuels LLC</u> , CV 13-576-SLR, 2014 WL 4247735 (D. Del. Aug. 26, 2014)		Butamax's motion for attorney fees is denied
<u>EON Corp.IP Holdings, LLC v. FLO TV Inc.</u> , CV 10-812-RGA, 2014 WL 2196418 (D. Del. May 27, 2014)		FLO TV Incorporated's Motion for Attorney's Fees (D.I.911) <b>IS DENIED</b>
<u>AGSouth Genetics, LLC v. Georgia Farm Servs., LLC</u> , 1:09-CV-186 WLS, 2014 WL 2117451 (M.D. Ga. May 21, 2014)	Court finds that this case was exceptional and Plaintiffs therefore may be awarded attorney fees under 7 U.S.C. § 2565. In its discretion, the Court finds that an award of attorney's fees in this matter is appropriate	Defendant's Motion for Attorney's Fees (Doc. 195), Motion for Costs (Doc. 196), and Motion to Alter or Amend the Judgment (Doc. 203) are <b>DENIED</b>
<u>Wagner v. Circle W Mastiffs</u> , 2:08-CV-00431, 2014 WL 4417761 (S.D. Ohio Sept. 8, 2014)		Plaintiffs are not entitled to attorneys' fees under the Lanham Act. Williamsons' Motion for Attorneys' Fees is <b>DENIED</b>
<u>W. Holdings, LLC v. Summers</u> , 2:13-CV-144 TS, 2014 WL 4922628 (D. Utah Sept. 30, 2014)		the Court will deny Defendant's Motion
<u>Reynolds Consumer Products, Inc. v. Handi-Foil Corp.</u> , 1:13-CV-214, 2014 WL 3615853 (E.D. Va. July 18, 2014)		the Court rejects Reynolds' requests for attorney's fees

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Robinson v. Bartlow, 3:12-CV-00024, 2014 WL 2468817 (W.D. Va. June 3, 2014)		Because Defendants are not prevailing parties within the meaning of the term in 35 U.S.C. § 285, I will deny Defendants' Motion
<u>Premium Balloon Accessories, Inc. v. Creative Balloons Mfg., Inc.</u> , 573 F. App'x 547, 559, 2014 WL 3891299 (6th Cir. 2014)		The district court's decision to award Premium attorney's fees on Creative's trade-dress-infringement claim is therefore reversed
HTC Corp. v. Tech. Properties Ltd., 5:08-CV-00882-PSG, 2014 WL 3706617 (N.D. Cal. July 21, 2014)		This court has ordered parties in mixed judgment cases to bear their own costs
<u>Parallel Iron LLC v. NetApp Inc.</u> , CV 12-769-RGA, 2014 WL 4540209 (D. Del. Sept. 12, 2014)	Defendant NetApp Inc.'s motion for attorney fees (D.I.58) is <b>GRANTED</b>	
<u>Pragmatus Telecom LLC v. Newegg Inc.</u> , CV 12-1533-RGA, 2014 WL 3724138 (D. Del. July 25, 2014)		Newegg is not a prevailing party under 35 U.S.C. § 285. Thus Defendant's motion for fees under the aforementioned statute is denied.
<u>Shire LLC v. Amneal Pharm., LLC</u> , CIV.A. 11-3781 SRC, 2014 WL 2861430 (D.N.J. June 23, 2014)		This Court sees no basis for it to exercise its discretion to award attorneys' fees pursuant to 35 U.S.C. § 285. Rather, an award of fees in this case would run contrary to the policies on which the Hatch–Waxman Act is based.
<u>IPVX Patent Holdings, Inc. v. Taridium, LLC</u> , 12-CV-5251 KAM SMG, 2014 WL 4437294 (E.D.N.Y. Aug. 6, 2014) <u>report and recommendation adopted</u> , 12-CV-5251 KAM SMG, 2014 WL 4437307 (E.D.N.Y. Sept. 9, 2014)		Plaintiff has not proffered any argument, nor can the Court anticipate any reasonable argument, as to why this case should be designated an “exceptional case” for the purposes of awarding attorney's fees. I therefore respectfully recommend that attorney's fees not be awarded.

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<u>Perry v. Estates of Byrd</u> , 1:13-CV-01555 ALC FM, 2014 WL 2998542 (S.D.N.Y. July 3, 2014)		This Court finds that this not an appropriate case for the exercise of its discretion to award attorney's fees or costs
<u>Cognex Corp. v. Microscan Sys., Inc.</u> , 13-CV-2027 JSR, 2014 WL 2989975 (S.D.N.Y. June 30, 2014)	the Court finds that this case is "exceptional," at least in part, for purposes of 35 U.S.C. § 285 and will grant at least a portion of plaintiffs' request for attorneys' fees, subject to both parties' further briefing and plaintiffs' documentation of the fees that they have incurred	
<u>Ohio Willow Wood Co. v. Alps S., LLC</u> , 2:04-CV-1223, 2014 WL 4775374 (S.D. Ohio Sept. 24, 2014)	The Court finds that Alps is entitled to its attorneys' fees incurred litigating this case after the BPAI issued its September 30, 2011 decision on the second reexamination	
<u>In re Rodriguez</u> , 02-10605, 2014 WL 4230821 (Bankr. S.D. Tex. Aug. 22, 2014)	plaintiffs' counsel would be awarded attorney fees	
<u>Monster Daddy v. Monster Cable Products, Inc.</u> , CIV.A. 6:10-1170-MGL, 2014 WL 2780331 (D.S.C. June 19, 2014)		Monster Cable's motion for attorney's fees, to the extent it seeks fees pursuant to the Lanham Act, 15 U.S.C. § 1117(a), is denied.
<u>Irwin Indus. Tool Co. v. Bibow Indus., Inc.</u> , CIV.A. 11-30023-DPW, 2014 WL 1323744 (D. Mass. Mar. 31, 2014)	For the foregoing reasons, Plaintiff's Motion for Sanctions (Dkt. No. 110) is GRANTED to the degree Mr. Prevett is ordered to pay to the Plaintiff the amount of \$5,000.	
<u>Gabriel Technologies Corp. v. Qualcomm Inc.</u> , 560 F. App'x 966, 2014 WL 1013125 (Fed. Cir. 2014)	case was exceptional, as would support award of attorney fees under federal patent statute	
<u>Aviva Sports, Inc. v. Fingerhut Direct Mktg., Inc.</u> , CIV. 09-1091 JNE/JSM, 2014 WL 702128 (D. Minn. Feb. 24, 2014)		the Court does not find the case exceptional under § 285. The Court therefore declines to award Fingerhut, Menard, and Kmart fees and costs under §

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<u>ABT Sys., LLC v. Emerson Elec. Co.</u> , 998 F. Supp. 2d 826, 2014 WL 562513 (E.D. Mo. 2014)		competitor was not entitled to award of attorney fees
<u>Pure Fishing, Inc. v. Normark Corp.</u> , 10-CV-2140-CMC, 2014 WL 223096 (D.S.C. Jan. 21, 2014)	For the reasons set forth above, the court grants in part and denies in part Normark's motion for an award of attorney fees under <b>Section 285</b> as to the Kelley Claim (Dkt. No. 352), awarding a total of \$77,562.75. The court denies the motions for sanctions under Rule 11 and for attorney fees under <b>Section 285</b> as to the Cook Claims	
<u>Therasense, Inc. v. Becton, Dickinson and Co.</u> United States Court of Appeals, Federal Circuit. March 12, 2014 745 F.3d 513		Alleged infringer were not entitled to attorney fees on appeal and on remand
<u>Integrated Tech. Corp. v. Rudolph Technologies, Inc.</u> , 734 F.3d 1352, 1361, 108 U.S.P.Q.2d 1734, 2013 WL 5878591 (Fed. Cir. 2013) cert. denied, 134 S. Ct. 2873, 82 USLW 3540, 82 USLW 3744, 82 USLW 3746, 2014 WL 883596 (U.S. 2014)		No costs awarded to either party
<u>Checkpoint Sys., Inc. v. All-Tag Sec. S.A.</u> , 711 F.3d 1341, 1348, 106 U.S.P.Q.2d 1234, 2013 WL 1188940 (Fed. Cir. 2013) <u>cert. granted, judgment vacated sub nom. Kobe Properties Sarl v. Checkpoint Sys., Inc.</u> , 134 S. Ct. 2134, 188 L. Ed. 2d 1121, 82 USLW 3647, 82 USLW 3650, 82 USLW 3411, 2014 WL 1757763 (U.S. 2014)		The award of attorney fees with costs and interest is reversed
<u>VirnetX Inc. v. Apple Inc.</u> , 925 F. Supp. 2d 816, 848, 2013 WL 692652 (E.D. Tex. 2013) <u>aff'd in part, vacated in part, rev'd in part sub nom. Virnetx, Inc. v.</u>		the Court <b>DENIES</b> VirnetX's request for attorneys' fees

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Cisco Sys., Inc., 2013-1489, 2014 WL 4548722 (Fed. Cir. Sept. 16, 2014)		
<u>Premium Balloon Accessories, Inc. v. Creative Balloons Mfg., Inc.</u> , 573 F. App'x 547, 549, 2014 WL 3891299 (6th Cir. 2014)		the district court erred in awarding attorney's fees to Premium for defending against Creative's infringement claims. Although Creative's claims admittedly lacked merit, they were not so exceptional in their groundlessness as to warrant that extraordinary sanction
<u>Rubbermaid Commercial Products, LLC v. Trust Commercial Products</u> , 2:13-CV-02144-GMN, 2014 WL 4987878 (D. Nev. Aug. 22, 2014) <u>report and recommendation adopted</u> , 2:13-CV-02144-GMN, 2014 WL 4987881 (D. Nev. Oct. 6, 2014)	Plaintiff's Motion for Attorneys' Fees and Costs (# 115) is <b>granted</b> . Rubbermaid is awarded its reasonable attorneys' fees and costs from the Defendants in the amount of \$272,523.76.	
<u>Microban Products Co. v. API Indus., Inc.</u> , 14 CIV. 41 KPF, 2014 WL 1856471 (S.D.N.Y. May 8, 2014)	Microban has sought attorney's fees and costs incurred in bringing the instant litigation. The Court will exercise its discretion to award such costs and fees	
<u>Ultratec, Inc. v. Sorenson Commc'ns, Inc.</u> , 13-CV-346-BBC, 2014 WL 4976596 (W.D. Wis. Oct. 3, 2014) <u>amended</u> , 13-CV-346-BBC, 2014 WL 5023098 (W.D. Wis. Oct. 8, 2014)		Given the differences between the statutes and absent further guidance from the Federal Circuit, I decline to find that <i>Octane Fitness</i> applies by extension to § 284.
<u>SmartWater, Ltd. v. Applied DNA Scis., Inc.</u> , 2014 U.S. Dist. LEXIS 137679 (E.D.N.Y. Sept. 29, 2014)		In sum, this case does not stand out in its legal merit (or lack thereof) or in the manner in which it has been conducted. I



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		therefore decline [4] to order fees under § 285.
<a href="#">Realtime Data, LLC v. CME Group, Inc., 2014 U.S. Dist. LEXIS 91051 (S.D.N.Y. June 24, 2014)</a>		Here, the Court determines that this case is not so exceptional as to warrant an award of fees and costs pursuant to 35 U.S.C. § 285.
<a href="#">Kaneka Corp. v. Zhejiang Med. Co., 2014 U.S. Dist. LEXIS 91659 (C.D. Cal. May 23, 2014)</a>		The Court finds that this case is not an exceptional case as required to grant attorney fees under 35 U.S.C. § 285. The Court further finds that sanctions under 28 U.S.C. § 1927 and the Court's inherent power are not warranted in this case. The Court DENIES Defendants' Motion for Attorney Fees and Costs.
<a href="#">Memory Lane, Inc. v. Classmates Int'l, Inc., 2014 U.S. Dist. LEXIS 63961 (C.D. Cal. May 8, 2014)</a>		Under the totality of the circumstances, neither Plaintiff's theory of liability nor its claims for relief "stand out" for their lack of merit, and there was nothing "unreasonable" about the manner in which Plaintiff litigated the case. As such, the Court does not find this case "exceptional" under section 35(a) of the Lanham Act, [23] and Defendants' Motion is DENIED.
<a href="#">BMW of N. Am., LLC v. Eurocar Tech., L.L.C., 2014 U.S. Dist. LEXIS 107447 (M.D. Fla. July 15, 2014)</a>		For the reasons set forth herein, the Court respectfully recommends that the motion for attorney's fees be denied
<a href="#">BMW of North Am., LLC v. Ismail Cuhadar, 2014 U.S. Dist. LEXIS 112365 (M.D. Fla. June 20, 2014)</a>		Adopted by, Costs and fees proceeding at, Motion denied by <a href="#">BMW of N. Am., LLC v. Cuhadar, 2014 U.S. Dist. LEXIS 112369 (M.D. Fla., July 10, 2014)</a>

<p><u>Checkpoint Sys., Inc. v. All-Tag Sec. S.A.</u>, 572 F. App'x 988, 2014 WL 4358440 (Fed. Cir. 2014)</p>	<p>We vacate the district court's ruling on the award of attorney fees, and remand for redetermination of the attorney fees issue on application of the standards established by the Supreme Court in <i>Highmark</i> and <i>Octane Fitness</i>.</p>
<p><u>Kobe Properties Sarl v. Checkpoint Sys., Inc.</u>, 134 S. Ct. 2134, 188 L. Ed. 2d 1121, 82 USLW 3647, 82 USLW 3650, 82 USLW 3411, 2014 WL 1757763 (2014)</p>	<p>Judgment vacated, and case remanded to the United States Court of Appeals for the Federal Circuit for further consideration in light of <i>Octane Fitness, LLC v. ICON Health &amp; Fitness, Inc.</i>, 572 U.S. —, 134 S.Ct. 1749, 188 L.E.2d 816 (2014) and <i>Highmark Inc. v. Allcare Health Management System, Inc.</i>, 572 U.S. —, 134 S.Ct. 1744, 188 L.E.2d 829 (2014).</p>
<p><u>Site Update Solutions, LLC v. Accor N. Am., Inc.</u>, 556 F. App'x 962, 2014 WL 1910424 (Fed. Cir. 2014)</p>	<p>The district court's order denying declaration of an exceptional case and award of attorneys' fees is vacated and the case is remanded for further proceedings in light of the Supreme Court's decision.</p>
<p><u>Honeywell Int'l Inc. v. Nokia Corp.</u>, CV 04-1337-LPS, 2014 WL 2568041 (D. Del. May 30, 2014)</p>	<p>Concurrent with the issuance of today's opinion, the Court will order the parties to submit a joint status report, in which they will be expected to advise the Court whether it can and/or should reevaluate its prior ruling with respect to attorneys fees in light of the recent Supreme Court rulings.</p>
<p><u>Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.</u>, 134 S. Ct. 1744, 1749, 188 L. Ed. 2d 829, 82 USLW 4328, 110 U.S.P.Q.2d 1343, 14 Cal. Daily Op. Serv. 4576, 2014 Daily Journal D.A.R. 5351, 24 Fla. L. Weekly Fed. S 729, 2014 WL 1672043 (2014)</p>	<p>The judgment of the United States Court of Appeals for the Federal Circuit is vacated, and the case is remanded for further proceedings</p>

The Court finds that this case is not an exceptional case under Section 285. Meyer Intellectual Properties Ltd. v. Bodum USA, Inc., 06 C 6329, 2014 WL 3724797 (N.D. Ill. July 28, 2014)

- Court awarded enhanced damages and attorneys' fees when denying Bodum's motion for judgment as a matter of law, but it did not say anything about attorney's fees after they reversed and said it actually wasn't an exceptional case?

Exercising its discretion, the Court denies the remaining request for sanctions without prejudice. Falstaff, 702 F.2d at 784. The Court reminds counsel for Defendants to comply with the local rules and Federal Rules of Civil Procedure and reserves the right to reconsider its ruling and reinstate other sanctions should Defendants fail to comply with the rules. **The Court's decision does not address any later request for fee shifting under 35 U. S. C. § 285 and Octane Fitness, LLC v. ICON Health & Fitness, Inc., 134 S. Ct. 1749, 1753, 188 L. Ed. 2d 816 (2014).** [Rawcar Group, LLC v. Grace Med., Inc., 2014 U.S. Dist. LEXIS 112071\(S.D. Cal.Aug. 4, 2014\)](#)