



June 4, 2020

***Via Email and Express Courier***  
*sp@gdnlaw.com*

Steven L. Procaccini  
Nissenbaum Law Group, LLC  
2400 Morris Avenue, Suite 301  
Union, New Jersey 07083  
908-686-8000

**Re: *Michele Colon v. World Mission Society, Church of God, et al.*, Superior Court of New Jersey Law Division: Bergen County, BER-L-6490-16 (Internal Ref. No. 3770307)**

Dear Steven L. Procaccini:

Google LLC (“Google”), a non-party to your litigation, has received your subpoena, dated June 02, 2020, in the above-referenced matter (the “Subpoena”). As we understand it, your Subpoena requests documents or testimony related to the purported YouTube accounts associated with Jordan Young, Jordan Hatfield, Great Light Studios, Kelsey Wells, kels729, Michele Colon, Ron Ramos, Ronnie Ramos, Tim Hoffman, Drew Gomez, DJ Gomez, Nuna Xekai, Raymond Gonzales.

At this point, however, as set forth more fully in the objections below, Google will not produce documents in response to the Subpoena because the requests are objectionable. Google further hereby makes the following objections to the Subpoena.

**Insufficient Information**

Given the limited information provided in the Subpoena, Google objects to the Subpoena because it is unable to determine whether there is a relevant account in our records pertaining to Jordan Young, Jordan Hatfield, Great Light Studios, Kelsey Wells, kels729, Michele Colon, Ron Ramos, Ronnie Ramos, Tim Hoffman, Drew Gomez, DJ Gomez, Nuna Xekai, Raymond Gonzales. As an initial matter, Google cannot respond to your request because it fails to sufficiently identify a Google account. Google has hundreds of millions of users, making it impossible to ensure that searches based on proper name, company name, birthday, social security number, presumed location, or similar information accurately identify the correct records.

**Service**

Google objects to the Subpoena to the extent it was improperly served. *See* Cal. Civ. Proc. Code § 2029.400.

**First Amendment**

Google objects to the Subpoena to the extent that the Subpoena asks for Google to disclose the identity of Google users who posted certain reviews or certain content, which implicates the First Amendment rights of Google users to engage in anonymous speech. As courts across the country addressing the issue have recognized, trial courts must strike a balance “between the well-established First Amendment right to speak anonymously, and the right of the plaintiff to protect its proprietary interests and reputation through the assertion of recognizable claims based on the actionable conduct of the anonymous, fictitiously-named defendants.” *Dendrite Int’l, Inc. v. Doe No. 3*, 775 A.2d 756, 760



(N.J. Super. A.D. 2001); see also *Perry v. Schwarzenegger*, 591 F.3d 1147, 1164 (9th Cir. 2010) (where substantial First Amendment concerns are at stake, courts should determine whether discovery is likely to chill protected speech). Accordingly, before a service provider such as Google may be compelled to unmask an anonymous speaker, (1) a reasonable attempt to notify the user of the request and the lawsuit must be made, thereby providing the user an opportunity to assert his or her First Amendment right to speak anonymously through an application for a protective order or a motion to quash; and (2) the plaintiff must make a prima facie showing of the elements of defamation. See *Krinsky v. Doe*, 72 Cal. Rptr. 3d 231, 239, 244–46 (Cal. Ct. App. 2008). Although there is no indication you have done so, if a court has considered and imposed the First Amendment safeguards required before a litigant may be permitted to unmask the identity of an anonymous speaker, please provide us with a copy of any relevant documents. Moreover, please provide us with a copy of the plaintiff’s complaint in this matter so that we can assess whether the plaintiff has or will be able to meet the First Amendment standard or demonstrate a compelling need for this discovery.

### **Jurisdiction**

Google objects to the Subpoena because it was issued by Superior Court of New Jersey Law Division: Bergen County, a court without subpoena power over non-party Google, and has not been properly domesticated in California as required by Cal. Civ. Proc. Code §§ 2029.100, et seq, see also the Uniform Interstate Depositions and Discovery Act (“UIDDA”). New Jersey’s subpoena power over a non-party does not extend beyond state lines, and the subpoena does not identify any statutory or other authority requiring compliance by an out-of-state non-party.

Google is headquartered in California and documents and information regarding its business are retrievable and will be produced only from its headquarters in Santa Clara County, California. Accordingly, Google accepts and responds to subpoenas issued from Santa Clara Superior Court and properly served upon Google, or the appropriate office of Google’s registered agent, Corporation Service Company (CSS) (see: <https://support.google.com/faqs/answer/6151275?hl=en>). California law provides a mechanism for obtaining a subpoena from a California court for use in judicial proceedings pending in other state court jurisdictions. See Cal. Civil Proc. Code § 2029.100 et seq.

### **User Notification**

Google objects to the Subpoena to the extent it fails to allow sufficient time for Google to notify the affected user and for the user to assert his or her rights in response. Google provides its users at least 21 days to object to your request or to inform Google of their intent to file a motion to quash. If your subpoena sufficiently identifies a Google account, Google intends to forward notice of this matter, including your name and contact information, to the user at the email address provided by the user.

### **Violation of Federal Law**

Google objects on the grounds that Section 2702(a) of the federal Stored Communications Act (“SCA”) prohibits Google from disclosing the content of electronic communications or content stored on behalf of the user pursuant to a subpoena. 18 U.S.C. § 2702(a) see e.g., *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011); *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004); *Mintz v. Mark Bartelstein & Assocs., Inc.* 885 F. Supp. 2d 987, 993-94 (C.D. Cal. 2012); *In re Subpoena Duces Tecum to AOL, LLC.*, 550 F.Supp.2d 606, 611 (E.D. Va. 2008); *Flagg v. City of Detroit*, 252 F.R.D. 346, 366 (E.D. Mich. 2008); *Viacom Int’l Inc. v. YouTube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008); *O’Grady v. Superior Court of Santa Clara*, 139 Cal. App. 4th 1423, 1441-43 (2006).

Instead, the appropriate way to seek such content is to direct your request to the account holder who has custody and control of the data in the account, is not bound by the SCA, and is the party to



whom discovery requests should be directed. *Suzlon*, 671 F.3d 726, 730-31; *Mintz*, 885 F. Supp. 2d at 993-94; *O'Grady*, 139 Cal. App. 4th at 1446-47. If the account holder is a party to the underlying litigation, you may serve a document request on the account holder for the content sought. *See Mintz*, 885 F. Supp. 2d at 993-94; *O'Grady*, 13 Cal. App. 4th at 1446-67; *see also Flagg*, 252 F.R.D. at 348, 366-67. Google users can obtain and produce their account content themselves, or by using Google Takeout, available at [www.google.com/takeout/](http://www.google.com/takeout/).

To the extent you are seeking the production of content based on a signed consent form, Google objects to the request because Google is unable to verify that the person signing the form is the account owner. If you are interested in going through our verified consent disclosure process, please contact me.

### **Authentication**

You do not need Google to authenticate any records. Google cannot authenticate the identity of the person who drafted or received a communication. Moreover, under California law, any of the following can authenticate the content in question: the owner of the account; any witness with knowledge; any participant to the communications; circumstantial evidence; or the person who collects the content for production. *See* Cal. Evid. Code § 1410 (No restriction on “the means by which a writing may be authenticated.”); *id.* § 1421 (Writing can be authenticated by its contents.). The Court of Appeal has held that a printout of an online profile was sufficiently authenticated by the police investigator that downloaded the printout, noting that the “threshold authentication burden for admissibility is not to establish validity or negate falsity in a categorical fashion, but rather to make a showing on which the trier of fact reasonably could conclude the proffered writing is authentic.” *People v. Valdez*, 201 Cal. App. 4th 1429, 1434-37 (2011). Thus, defendant, his or her authorized representative, a defense investigator, or any witness with knowledge are all proper parties to authenticate content, and authentication by Google is therefore unnecessary.

### **Deposition/Testimony**

Google objects to the Subpoena to the extent it calls for a deposition or testimony on June 19, 2020, and does not intend to make a witness available on the requested date pursuant to its objections below.

1. Google objects on the grounds that the Subpoena imposes an undue burden on Google, a non-party. Google also objects on the grounds that the information sought can be obtained through less burdensome means, including from the parties to the case or through the production of documents in response to the Subpoena.
2. Google objects to the extent that the Subpoena is seeking testimony to authenticate records produced by Google. Such testimony is unnecessary and unduly burdensome as records can be authenticated by Certificate of Authenticity.
3. Google objects to the extent that the Subpoena calls for testimony more properly sought from an expert witness, including but not limited to testimony regarding how Google’s products or services work.
4. Google objects on the grounds that the Subpoena is vague, overbroad, duplicative, cumulative, and oppressive. Google further objects to the extent the Subpoena is served for the purpose of annoying and harassing Google, a non-party.
5. Google objects on the grounds that the Subpoena demands that Google, a non-party, appear as a witness at its own expense. To the extent that Google appears as a witness pursuant to the Subpoena, Google shall only do so upon compensation allowed under applicable law for any costs, including attorney fees, related to the deposition.



6. Google objects to the time and place set by the Subpoena for the deposition. The time and place of the requested deposition was selected unilaterally, without consulting with Google about the availability of its witness(es) or its counsel. Furthermore, a deposition on June 19, 2020 or in the near future is not an appropriate means of discovery in light of the ongoing social distancing recommendations / directives issued in California in response to COVID-19. To the extent Google produces a witness to provide deposition testimony in response to the Subpoena, Google shall do so at a mutually agreeable time and place.

### **Additional Objections**

1. Google objects to the Subpoena to the extent it seeks to impose an undue burden on a disinterested non-party. Google further objects to the Subpoena (including but not the request for "Youtube Livestreams") to the extent it seeks information already in a party's possession or available to a party from some other source (including public sources) that is more convenient, less burdensome or less expensive. Google objects to the Subpoena to the extent it seeks electronically stored information that is not reasonably accessible to Google.
2. Google objects to the Subpoena to the extent it seeks information that is not proportionate to the needs of the case, not relevant to any party's claims or defenses, or not reasonably calculated to lead to the discovery of admissible evidence.
3. Google objects to the Subpoena to the extent it specifies a date of production and/or date of deposition that is unreasonable and unduly burdensome, including because it may not afford Google time to provide sufficient notice to the user.
4. Google objects to the Subpoena to the extent that it is vague, ambiguous, unlimited in time or scope, or fails to identify the information sought with reasonable particularity. Accordingly, Google further objects to the Subpoena to the extent it purports to require Google to preserve the requested information. Therefore you should not assume that Google will undertake steps to preserve any information in response to your Subpoena. Google is willing to meet and confer to discuss any preservation request.
5. Google objects to the Subpoena to the extent it seeks to impose obligations on Google beyond what is permissible under applicable law.
6. Google also objects to the Subpoena to the extent it seeks information containing confidential financial, proprietary or trade secret information, or any information subject to a confidentiality agreement or protective order.
7. Google further objects to the Subpoena to the extent it seeks information protected by any privilege, including the attorney-client privilege, work product immunity doctrine, common interest privilege, or any other applicable privilege, immunity, or restriction on discovery.

Google reserves the right to further object to the Subpoena in any additional response.

If you have any questions, please feel free to contact the undersigned at the Legal Support Department alias at [GOOGLE-LEGAL-SUPPORT@GOOGLE.COM](mailto:GOOGLE-LEGAL-SUPPORT@GOOGLE.COM). Additionally, should you wish to seek any judicial relief in connection with this matter, Google requests the opportunity to meet and confer in advance of any such filing. Thank you.

Very truly yours,  
/s/ Anjali Shrestha  
Legal Investigations Support