

# EXHIBIT A



1158



**Electronic Frontier Foundation**  
Protecting Rights and Promoting Freedom on the Electronic Frontier

November 5, 2007

Len M. Garza, Esq.  
Ruprecht, Hart & Weeks, LLP  
306 Main Street  
Millburn, NJ 07041

By FedEx and Fax

**Re: Notice of forthcoming sanctions motion regarding Plaintiff's frivolous subpoena in *Township of Manalapan v. Moskovitz***

Dear Mr. Garza:

This letter is to notify you, pursuant to New Jersey Rule of Court 1:4-8, that unless your client promptly withdraws its frivolous subpoena to Google Inc. ("Google") which seeks the identity of my client, blogger "datruthsquad" ("Doe"), an application for sanctions will be made.

While lacking any evidence whatsoever to support its theory, your client, the Plaintiff, has nonetheless conclusively represented to the Court that my client is Stuart Moskovitz, the Defendant in *Township of Manalapan v. Moskovitz*, Superior Court of New Jersey, Monmouth County Law Division, Docket No. MON-L-2893-07. In its papers, Plaintiff has expressed what can charitably be described as annoyance and irritation that the anonymous author in question "discusses the various aspects of this litigation on his internet blog ... dissect[ing] the specific allegations asserted against [the Defendant], offering his opinion and analysis of the validity of each claim." Brief in Support of Plaintiff's Application to Vacate the Order to Show Cause, August 3, 2007, at p.15. While Plaintiff may not appreciate such critical speech, that in no way entitles Plaintiff to embark on a fishing expedition aimed at tying my client's writings to the Defendant.

As you and I have repeatedly discussed, your subpoena of September 26, 2007, to Google ("the subpoena") is legally flawed and cannot be enforced. Moreover, it was clearly not issued for any proper purpose but instead to unmask an anonymous speaker who was engaged in activity protected by the First Amendment. In short, the subpoena aims "to harass or to cause unnecessary delay or needless increase in the cost of litigation" and thus violates Rule 1:4-8.

***1. The Subpoena, Issued From New Jersey and Served in California, Is Not Enforceable.***

As I have repeatedly explained to you, there is no question that the New Jersey subpoena issued to Google - at its corporate headquarters in Mountain View, California - is not enforceable: New Jersey Rule of Court 1:9-4 requires litigants to issue civil subpoenas within the state's borders. Nonetheless, you have refused to withdraw the subpoena.

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Your indifference to this undisputable fact – “[W]e will not be withdrawing the subpoena so, if necessary, we can address the issues via motion practice” – is not acceptable and unnecessarily burdens the Court with the task of resolving this matter. E-mail of November 1, 2007, from Len Garza to Matt Zimmerman.

## ***2. The Subpoena Does Not Seek Information Relevant to Plaintiff's Claims.***

Litigants may only obtain discovery “which is relevant to the subject matter involved in the pending action.” New Jersey Rule of Court 4:10-2. While discovery requests need not seek admissible information, they must seek “information ... reasonably calculated to lead to the discovery of admissible evidence” relevant to a “claim or defense of the party seeking discovery.” *Id.*

In addition, the First Amendment imposes heightened standards that further protect anonymous speakers from unwarranted discovery requests. As New Jersey appellate courts have held, and as I also discussed with you previously, litigants seeking to unmask anonymous speakers must (among other things) specifically identify actionable content and produce sufficient evidence to support a prima facie case. Moreover, the court must then “balance the defendant’s First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant’s identity to allow the plaintiff to properly proceed.” *Dendrite Int’l v. Doe No. 3*, 775 A.2d 756, 761 (N.J. Super. Ct. App. Div. 2001).

By no stretch of the imagination does the subpoena satisfy these standards. Plaintiff has absolutely no reasonable basis to believe that my client’s identity will in any way lead to admissible evidence to support its underlying claims that the Defendant violated various ethical duties to the Plaintiff in 2005.

Moreover, even assuming that my client’s identity was in some way relevant to Plaintiff’s claims, the scope of information and materials sought by the subpoena is clearly overbroad and designed only to improperly pry into the personal life of the author of material critical of the Plaintiff. To wit, in addition to my client’s name and contact information, the subpoena seeks the following information from Google:

- User’s IP address
- Browser type and language
- “Any and all account information”
- Account settings and profile information
- Copies of the weblog posts and comments, including drafts
- Any and all e-mails received by Google from the account holder
- Any and all e-mails sent on Google’s server by the account holder
- “The source of the information being posted on the blog”
- “Any other information associated with the account”

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It is obvious that none of this information sought in the subpoena is relevant to Plaintiff's claims and can only be sought in order to harass my client.

I hereby request that you withdraw the subpoena by November 13, 2007, so that my client and the Court need not be further burdened by this matter. Under Rule 1:4-8, your client would ordinarily have 28 days to withdraw the subpoena before a sanctions motion could be filed. However, since the effective date of the subpoena (as per our recent agreement) is November 14, 2007, action needs to be taken before that 28-day period expires. I therefore request, as per Rule 1:4-8, that your client either consent to an adjournment of the November 14 subpoena deadline or waive the balance of the 28-day notice period. If you do not request an adjournment, your client will be deemed to have elected the waiver.

If you have any questions regarding the impending sanctions application or any related matter, please feel free to contact me.

Sincerely,



Matt Zimmerman  
Staff Attorney  
Electronic Frontier Foundation  
454 Shotwell St.  
San Francisco, CA 94110  
phone: 415-436-9333 x127  
fax: 415-436-9993  
mattz@eff.org

cc: Defendant Stuart Moskowitz

**RUPRECHT, HART & WEEKS, LLP**  
**COUNSELLORS AT LAW**  
 306 Main Street  
 Millburn, New Jersey 07041  
 Telephone (973) 379-2400  
 Telecopier (973) 379-2446

**LOUIS A. RUPRECHT\***  
**THOMAS G. HART\***  
**DAVID PARKER WEEKS\***  
**MICHAEL R. RICCIARDULLI\***

\* Certified by the Supreme Court of New Jersey as a Civil Trial Attorney

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**KARIN J. WARD**  
**SCOTT T. GLENNON**  
**BRIAN P. MAHER**  
**LEN M. GARZA**  
**LAURA M. BURAK**

November 8, 2007

Matt Zimmerman, Esq.  
 Staff Attorney  
 Electronic Frontier Foundation  
 454 Shotwell Street  
 San Francisco, CA 94110

Re: Township of Manalapan v. Stuart Moskowitz, Esq.  
 Our File No. 1158  
 Docket No. MON-L-2893-07

Dear Mr. Zimmerman:

I have received and reviewed your letter dated November 5, 2007. I hereby consent to an adjournment of the subpoena deadline to December 7, 2007.

Very truly yours,

RUPRECHT, HART & WEEKS, LLP

Len M. Garza

LMG:jm

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November 8, 2007

Matt Zimmerman, Esq.  
Electronic Frontier Foundation  
454 Shotwell St.  
San Francisco, California 94110

Dear Mr. Zimmerman:

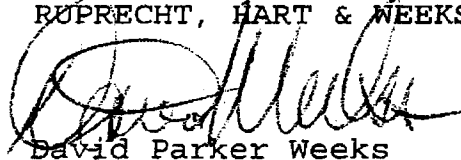
Your November 5, 2007 letter threatening my firm is an inappropriate attempt to intimidate which will not be accepted.

We are seeking materials which appear reasonably calculated to lead to the discovery of relevant and admissible evidence. That is the applicable standard and we do not intend to forego our rights because of your heavy-handed threats.

In the event that it is necessary to comply with procedural technicalities, we will obtain a writ, commission or letters rogatory directed to the California Superior Court for the County of Santa Clara to issue a subpoena in accordance with California Civil Proc. Code §2029.

Very truly yours,

RUPRECHT, HART & WEEKS, LLP



David Parker Weeks

DPW/pb  
Via Regular Mail  
and Fax 415-436-9993



**Electronic Frontier Foundation**  
Protecting Rights and Promoting Freedom on the Electronic Frontier

December 7, 2007

Len M. Garza, Esq.  
Ruprecht, Hart & Weeks, LLP  
306 Main Street  
Millburn, NJ 07041

By FedEx and Fax

**Re: Notice of forthcoming sanctions motion regarding Plaintiff's frivolous Motion for Letter Rogatory in *Township of Manalapan v. Moskovitz***

Dear Mr. Garza:

It is with great disappointment that I am forced to deliver to you yet another notice of a forthcoming sanctions motion based on your ongoing and repeatedly frivolous conduct. This letter is to notify you, pursuant to New Jersey Rule of Court 1:4-8, that unless you immediately withdraw your frivolous Motion for Letter Rogatory, apparently filed on December 4, 2007, an application for sanctions will be made.

On November 28, 2007, my co-counsel Frank Corrado filed a motion to quash and for a protective order regarding your frivolous subpoena of September 26, 2007, which sought not only the identity of my client, the blogger known as "datruthsquad," but also "any and all information" associated with his Google account. As we explained in detail in our supporting brief, your client is flatly not entitled to obtain the discovery that you seek. Undeterred by the groundlessness of your position, however, and without any notice to either me or Mr. Corrado, you have filed a new motion with the Court seeking authorization for the same prohibited conduct. Moreover, despite immediately contacting you and requesting the materials you filed with the Court in support of your new motion when I independently became aware of them, you have not only failed to comply with that request but have not even shown me the courtesy of acknowledging it.

Additionally, despite obliquely referencing your proposed new subpoena in your moving papers (which Mr. Moskovitz was kind enough to pass along to me after you failed to do so), you apparently did not even file such a subpoena with the Court. It is unclear, then, how the Court - let alone my client - is supposed to evaluate the substance of your request.

Assuming that you are asking the Court to approve the same deficient subpoena that you issued on September 26, 2007, the substantive failings remain the same. The subpoena does not, contrary to your assertions, seek relevant information. While you undoubtedly would like to determine whether or not Mr. Moskovitz is the critical blogger in question, it is not remotely relevant to your claims, and litigants are only able to seek "information ... reasonably calculated to lead to the discovery of admissible evidence" relevant to a "claim or defense of the party seeking discovery." New Jersey Rule of Court 4:10-2. As

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whether or not Mr. Moskowitz violated a prior gag order is not at all relevant to the ultimate success or failure of your claims, you clearly have no basis for infringing on my client's First Amendment right to anonymous speech. Moreover, you are not entitled to this discovery in any case, as we explained in our November 28 brief, because your client is absolutely barred from seeking such discovery by the federal Stored Communications Act.

I am dismayed that you failed to respond to any of our substantive arguments before again attempting to move forward with a prohibited avenue of discovery. I am further dismayed at your lack of candor in failing to bring these standing objections to the attention of the Court. Accordingly, you have failed to meet your duties under Rule of Professional Conduct 3.3 and once again force the parties and the Court to spend unnecessary time and resources addressing your frivolous legal tactics.

I hereby request that you withdraw the Motion for Letter Rogatory and supporting papers by December 11, 2007. Under Rule 1:4-8, your client would ordinarily have 28 days to withdraw the subpoena before a sanctions motion could be filed. However, since our opposition would be due on December 13, action needs to be taken before that 28-day period expires. I therefore request, as per Rule 1:4-8, that your client either consent to an adjournment of the December 21 return date for your Motion or waive the balance of the 28-day notice period. If you do not request an adjournment by December 11th, your client will be deemed to have elected the waiver.

If you have any questions regarding the impending sanctions application or any related matter, please feel free to contact me.

Sincerely,



Matt Zimmerman  
Staff Attorney  
Electronic Frontier Foundation  
454 Shotwell St.  
San Francisco, CA 94110  
phone: 415-436-9333 x127  
fax: 415-436-9993  
mattz@eff.org

cc: Defendant Stuart Moskowitz, Esq.  
Frank Corrado, Esq.



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December 10, 2007

Matt Zimmerman, Esq.  
Staff Attorney  
Electronic Frontier Foundation  
454 Shotwell Street  
San Francisco, CA 94110

Re: Township of Manalapan v. Stuart Moskovitz, Esq.  
Our File No. 1158  
Docket No. MON-L-2893-07

Dear Mr. Zimmerman:

I am in receipt of your letter dated December 7, 2007 threatening sanctions. It is unfortunate you persist in sending me these time-wasting, unproductive and unprofessional threats in the face of my continued professionalism towards you. Considering you have not even been admitted *pro hac vice* regarding this action, I have only offered you the utmost in professional courtesy by forwarding you papers from this action and graciously agreeing to your requests for extensions of time in complying with our subpoena.

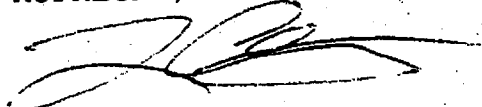
Your repeated inappropriate characterizations that our motions are frivolous are absurd. While you claim your arguments are "slam-dunks", astute and diligent research suggests otherwise. We have reasonable and legitimate positions which we will apprise you of via the appropriate court filings and throughout future motion hearings.

Additionally your accusations that I am in violation of the Rules of Professional Conduct are wildly ill-placed and unacceptable. Pending your admission *pro hac vice*, your previous inflammatory conduct likely runs afoul of the same ethical standards you recklessly cite and propose to know so well. Further, your accusation that I have been unresponsive to your requests regarding materials our firm has filed with the court is patently false.

We refuse to engage in a protracted campaign of responding to your unproductive letter, email and telephone correspondence which futilely attempts to cow our client into abdicating its rights.

Very truly yours,

RUPRECHT, HART & WEEKS, LLP



Len M. Garza

LMG:jm  
Enclosure

cc: Frank L. Corrado, Esq.  
Stuart J. Moskowitz, Esq.