

TOWNSHIP OF MANALAPAN, )  
 )  
 Plaintiff, )

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH  
COUNTY

vs. )

Docket No. MON-L-2893-07

STUART MOSKOVITZ, ESQ., JANE DOE )  
and/or JOHN DOE, ESQ. I-V (these names )  
being fictitious as their true identities are )  
presently unknown) and XYZ Corporation, I-V )  
(these names being fictitious as their true )  
corporate identities are currently unknown) )

**CIVIL ACTION**

(LEGAL MALPRACTICE)

**CERTIFICATION OF MATTHEW J.  
ZIMMERMAN**

Defendants.

I, Matthew Zimmerman, of full age, certify, declare and state:

1. I am an attorney at law, duly licensed and admitted to practice in the State of California. I am a staff attorney at the Electronic Frontier Foundation, a non-profit legal services organization. The facts contained in the following affidavit are known to me of my own personal knowledge and if called upon to testify, I could and would competently do so.
2. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's Complaint, filed on or around June 13, 2007.
3. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's Brief in Support of Plaintiff's Application to Vacate the Order to Show Cause and Cross-Application to Bar Defendant From Communicating With Representatives of Plaintiff, filed on or around August 3, 2007.
4. Attached hereto as Exhibit C is a true and correct copy of the Certification of Daniel J. McCarthy, filed on or around August 3, 2007, in support of Plaintiff's Application to Vacate the Order to Show Cause.
5. Attached hereto as Exhibit D are true and correct copies of blog screenshots, introduced by Daniel J. McCarthy's with his Certification of August 3, 2007, purportedly showing multiple blog postings by pseudonymous blogger "datruthsquad."

6. Attached hereto as Exhibit E is a true and correct copy of Defendant's Brief in Opposition to Plaintiff's Application (sic) and Plaintiff's Cross-Application, filed on or around August 12, 2007.
7. Attached hereto as Exhibit F is a true and correct copy of Defendant's Certification in Opposition to Plaintiff's Application (sic) Plaintiff's Cross-Application, filed on or around August 12, 2007.
8. Attached hereto as Exhibit G is a true and correct copy of Plaintiff's Subpoena to Google, Inc. ("Google"), seeking the identity and other information associated with pseudonymous blogger "datruthsquad," issued on or around September 26, 2007 ("the subpoena").
9. Attached hereto as Exhibit H are true and correct copies of (1) the September 26, 2007, cover letter that accompanied the subpoena to Google in Mountain View, California; and (2) the U.S. Postal Service certified mail receipt indicating delivery in Mountain View, California. Both documents were delivered to me by e-mail on November 1, 2007, by Joyce McGeough who, on information and belief, is the secretary to Plaintiff counsel Len Garza.
10. Attached hereto as Exhibit I is a true and correct copy of an editorial by Mark Rosman entitled "Legal Case is Costing Town, But How Much?", which appeared in the News Transcript on or around September 26, 2007.  
Downloaded from  
<<http://newstranscript.gmnews.com/news/2007/0926/editorials/042.html>> on  
November 24, 2007.
11. I repeatedly discussed the procedural and substantive shortcomings of Plaintiff's subpoena with Plaintiff's counsel, by phone, by e-mail, and by written letter. For example, I spoke directly with Plaintiff's counsel Len Garza at least three times by phone between October 17, 2007, and October 31, 2007, and in each of those conversations I indicated that Plaintiff's

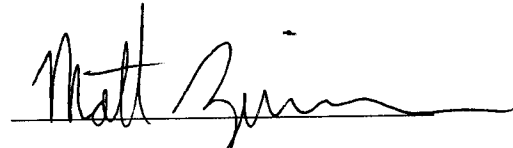
subpoena was not enforceable and the grounds that led to that conclusion. During one such conversation, I informed Mr. Garza that the attempts to subpoena Google did not meet the First Amendment requirements associated with attempts to unmask anonymous online speakers. Moreover, I gave Mr. Garza the citation for Dendrite Int'l v. Doe No. 3, 342 N.J.Super. 134 (App. Div. 2001), the leading New Jersey Court of Appeals case on the subject.

12. On a subsequent call, after Mr. Garza informed me that Plaintiff would not withdraw the subpoena on First Amendment grounds, I repeated my request that the subpoena be withdrawn at least on procedural grounds as it was improperly issued from New Jersey. Mr. Garza later informed me by e-mail that Plaintiff would “not be withdrawing the subpoena” and that “if necessary, we can address the issues via motion practice.”
13. Attached hereto as Exhibit J is a true and correct copy of a notice of forthcoming sanctions motion delivered to Mr. Garza on November 5, 2007, in which I informed him that its subpoena was not enforceable and requested again that he promptly withdraw it. In it, I again reminded Mr. Garza of the Court of Appeals’ decision in Dendrite Int'l v. Doe No. 3, 342 N.J.Super. 134 (App. Div. 2001) that articulated a higher discovery standard demanded by the First Amendment when seeking the identity of anonymous online speakers.
14. Attached hereto as Exhibit K is a true and correct copy of a November 8, 2007, letter sent from Plaintiff’s counsel David Parker Weeks in response to my November 5<sup>th</sup> notice of forthcoming sanctions. In it, Mr. Weeks acknowledges an otherwise valid procedural course by which to issue out-of-state subpoenas, a course that plaintiff’s counsel did not and has not yet followed in this case.
15. Attached hereto as Exhibit L is a “Chart of Plaintiff’s Written Court Statements Alleging That Defendant Moskovitz is Blogger ‘Datruthsquad.’”

All statements are true and correct reproductions of the statements made by Plaintiff in various Court filings.

16. Attached hereto as Exhibit M is a true and correct copy of a Google help page entitled "Google Accounts Help: What's a Google Account," located at <<http://www.google.com/support/accounts/bin/answer.py?answer=27439&topic=10458>> (visited on November 24, 2007).
17. Attached hereto as Exhibit N is a true and correct copy of Greenbaum v. Google, Inc., --- N.Y.S.2d ----, 2007 WL 3197518 (N.Y.Sup. 2007).
18. Attached hereto as Exhibit O is a true and correct copy of Mobilisa, Inc. v. John Doe 1, No. 1 CA-CV 06-0521 (Ariz. Ct. App. November 27, 2007).
19. Attached hereto as Exhibit P is a "Chart Applying Restrictions of the Stored Communications Act to the Township's Subpoena to Google of September 26, 2007."

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 27th day of November, 2007, in San Francisco, California.

  
Matthew J. Zimmerman