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December 4, 2007

The Honorable Terence P. Flynn, J.S.C.  
Monmouth County Courthouse  
71 Monument Park, West Wing  
P.O. Box 1266  
Freehold, NJ 07728-1266

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

Dear Judge Flynn:

Please accept this letter memorandum in lieu of a more formal brief in support of Plaintiff's motion for the issuance of a Letter Rogatory allowing Plaintiffs to take the deposition of and serve the attached subpoena on Google, Inc.

#### I. OUR SUBPOENA TO GOOGLE

As stated in the Certification submitted in support of this Motion, we seek to serve Google, Inc. with a subpoena demanding information regarding the identity of the individual ("the Poster") who is the owner of and anonymous poster on the internet blog located at <http://www.datruthsquad.blogspot.com> ("daTruthSquad").

The blog is hosted on a blogging site, [www.blogger.com](http://www.blogger.com) ("Blogger.com"), owned by Google, Inc.

It appears that the Poster may be the defendant in this litigation, Stuart Moskowitz. If this belief is substantiated by the information we are subpoenaing from Google, it will confirm that Defendant is in violation of the July 23, 2007 Court Order ("July 23<sup>rd</sup> Order") prohibiting communications with the public and press regarding the matters in this litigation and has misrepresented in court that he is not the Poster. The July 23<sup>rd</sup> Order mandated, among other things, that pending a hearing on an order to show cause scheduled for August 20, 2007, "the Plaintiff, Township of Manalapan, including Township elected officials, employees, and Township attorneys and staff, and Defendant, Stuart J. Moskowitz, Esq., are enjoined and restrained from: Communicating with the press and the public concerning the subject matter of this litigation" (emphasis added). (See Copy of July 23<sup>rd</sup> Order, annexed as Ex. A.)

## II. PROCEDURE FOR OBTAINING A LETTER ROGATORY

Here, we seek merely to compel Google to provide information in accordance with the attached subpoena and we do not intend to actually take a deposition of any Google representative. However, under New Jersey Rule 4:14-7(c), a subpoena commanding a person to produce evidence for use in discovery may be issued only by also simultaneously compelling that person's attendance for the taking of a deposition at a designated time and place. The Rule provides,

in pertinent part that, "A subpoena commanding a person to produce evidence for discovery purposes may be issued only to a person whose attendance at a designated time and place for the taking of a deposition is simultaneously compelled." R. 4:14-7(c). Thus, in attempting to obtain documentary discovery from Google via a subpoena, the Rules require us to follow the procedure for moving to take a non-party deposition outside the State of New Jersey.

Pursuant to Rule 4:11-5, depositions taken outside the State of New Jersey may be applied for in accordance with a commission or letter rogatory issued by a New Jersey court. The Rule provides, in pertinent part:

A deposition for use in an action in this state, whether pending, not yet commenced, or pending appeal, may be taken outside this state... (b) in accordance with a commission or letter rogatory issued by a court of this state, which shall be applied for by motion on notice... Commissions and letters rogatory shall be issued in accordance with R. 4:12-3.

R. 4:11-5. Furthermore, a Comment to the Rule "permits the issuance of a commission or letter rogatory without a showing of necessity or convenience." Pressler, N.J. Court Rules, Comment 1.3 on R. 4:11-5 (2007). The comment further states that the procedure for the issuance of letters rogatory "incorporates the procedural provisions of R. 4:12-3, which provide for this technique in respect of depositions to be taken in foreign countries." Id. Rule 4:12-3 provides, in pertinent part:

... in a foreign country depositions shall be taken ... (b) before such person or officer as may be appointed by commission or under letters

rogatory. A commission or letters rogatory shall be issued on application and notice, and on such terms and with such directions as are appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

It is respectfully submitted that the attached Letter Rogatory conforms to the procedural requirements of R. 4:14-7, R. 4:11-5 and R. 4:12-3 and that this Court should issue the Letter Rogatory so that Plaintiff may depose and serve the attached subpoena on Google, Inc., to discover information essential to this litigation. It is clear that ascertaining whether the Poster on daTruthSquad is, in fact, the defendant, Mr. Moskovitz, is essential to determining whether he violated the July 23<sup>rd</sup> Order and made misrepresentations to the court. The identification information we request from Google via the attached subpoena is essential and critical to this determination and the information cannot be obtained elsewhere.

For the foregoing reasons, it is respectfully requested that Plaintiffs' motion for the issuance of a Letter Rogatory to allow Plaintiffs to take the deposition of and serve the attached subpoena on Google, Inc. be granted.

Respectfully submitted, Document hosted at JDSUPRA  
<http://www.jdsupra.com/post/documentViewer.aspx?fid=3f9104d0-60ea-431f-aab9-040dbb10a5a>

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Enclosures

cc: Stuart J. Moskovitz, Esq.

Daniel J. McCarthy, Esq.