

UNITED STATES DISTRICT COURT

for the Northern District of California

Art of Living Foundation)
Plaintiff)
v.) Civil Action No. 10-cv-5022 LB
Does 1-10, inclusive)
Defendant) (If the action is pending in another district, state where: Northern District of California)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Google Inc. c/o Corporation Service Company d/b/a CSC - Lawyers Incorporating Service 2730 Gateway Oaks Dr. Ste 100, Sacramento, CA 95833

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Please see Attachment A.

Place: KRONENBERGER BURGOYNE, LLP 150 Post Street, Suite 520 San Francisco, CA 94108 Date and Time: See attached order.

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/20/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff Art of Living Foundation, who issues or requests this subpoena, are:

Karl S. Kronenberger, Kronenberger Burgoyne, LLP 150 Post Street, Suite 520, San Francisco, CA 94108 karl@KBInternetLaw.com; (415) 955-1155

Civil Action No. 10-cv-5022 LB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT A

Definitions

1. The terms "YOU," "YOUR," and "GOOGLE" as used herein mean and include Google, Inc., its past or present officers, directors, employees, representatives, consultants, partners, independent contractors, agents and attorneys, as well as any past or present predecessor, successor, parent, subsidiary, division or affiliate thereof, whether domestic or foreign and whether owned in whole or in part.
2. "PLAINTIFF" as used herein, means and includes Plaintiff Art of Living Foundation and its employees, independent contractors, agents, and/or ANY PERSON work on its behalf.
3. "PERSON" OR "PERSONS" means ANY individual, corporation, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, limited liability corporation (LLC), doing business as (DBA), OR other legal, business OR governmental entity.
4. "AND" AND "OR" shall be construed both conjunctively AND disjunctively, AND each shall include the other whenever such dual construction will serve to bring within the scope of this request any DOCUMENTS which would otherwise not be brought within its scope.
5. "ANY" AND "ALL" shall both be interpreted in the most inclusive light, AND shall include "ANY AND ALL."
6. "DOCUMENT" and "DOCUMENTS" shall have the meaning ascribed to it by Fed. R. Civ. Proc. R. 34 and to "writings" and "recordings" by Fed. R. Evid. 1001, and include without limitation the original and each non-identical copy of any written, printed, typed, recorded, computerized, taped, graphic or other matter, in whatever form, whether in final or draft. Thus, DOCUMENT includes but is not limited to electronic mail, file folders, file jackets and metadata, as well as each original and each copy, stored electronically or in any other format, information, all drafts, and all non-identical copies bearing notations or marks not found in the original or other copies and includes, without limitation, all notes, memoranda, studies, reports, analyses, business plans, forecasts, estimates, appraisals, test data, notebooks, working papers, letters, correspondence, contracts, agreements, licenses, charts, graphs, indices, discs, Internet web server files, databases, data compilations, data sheets, data processing cards or programs, microfilm, microfiche, forms, diaries, time calendars (including appointment calendars, day calendars, day timers), appointment books, logs, bank records (including monthly or other periodic statements, checks, deposit slips, wire transfer

documentation), financial records (including books of account, ledgers, journals, invoices, bills, balance sheets, profit and loss and income statements audited and unaudited financial statements), card files, pamphlets, periodicals, schedules, telegrams, telexes, minutes of meetings, manuals, brochures, promotional materials, bulletins, circulars, specifications, instructions, notices, comparisons and surveys.

7. "EACH" means each and every.
8. The term "INCLUDING" as used herein is illustrative and is in no way a limitation on the information requested.
9. "REGARDING" or "RELATING" shall be construed in the broadest sense and shall mean and include: concerning, alluding to, responding to, referring to, connected with, commenting on, summarizing, with respect to, pertaining to, about, regarding, relating to, discussing, involving, showing, describing, reflecting, analyzing, evidencing, comprising, constituting, containing, embodying, mentioning, consisting of or otherwise relating to the subject matter.

Instructions

1. Pursuant to Fed. R. Civ. Proc. R. 45, YOU must produce the below-enumerated categories of DOCUMENTS, including tangible items of any nature which are now or have at any time been within YOUR possession, custody, or control. In lieu of producing the original DOCUMENTS and things, YOU may provide a legible copy to Plaintiff's counsel at Kronenberger Burgoyne, LLP, 150 Post Street, Suite 520, San Francisco, CA 94108 within the time permitted by law. By permitting YOU to provide legible copies in lieu of originals, Plaintiff reserves the right to request the inspection of any original document or tangible thing at any time and place that is mutually convenient for Plaintiff and YOU.
2. Each DOCUMENT produced pursuant to this Request shall be produced as it was kept in the usual course of business and shall be identified at such production according to the number of the request to which it corresponds. Each DOCUMENT shall be produced in its original file folder, or, in lieu thereof, any writing on the file folder from which each such document is taken and shall be copied and appended to such document.
3. For each DOCUMENT produced, identify the PERSON for whom, or the department, division, or office for which, such DOCUMENT is maintained.

4. Electronic DOCUMENTS and computerized information shall be produced in an intelligible electronic format or together with a description of the system from which it was derived sufficient to permit the materials to be rendered intelligible.
5. Identify all DOCUMENTS requested hereby that were at any time in YOUR possession, custody, or control and have since been destroyed by stating a description of the DOCUMENT and identifying the names and titles of ANY PERSON involved in or with knowledge of the destruction.
6. If YOU object to a request as unduly burdensome or overly broad, YOU shall answer those portions of the request which are unobjectionable and state specifically in what respect the request is objectionable.

Request for Production of Documents

1. YOU are hereby authorized and ordered to expeditiously disclose, to the above named PLAINTIFF, Art of Living Foundation, information sufficient to identify the user data and account holder for each of the following:
 - a. The individual(s) who established and maintain control of the blog located at <artoflivingfree.blogspot.com> (the "Blog");
 - b. The Blogger User Profile associated with the Blog: AoL-Free; and
 - c. The email account <reklawyksekul@gmail.com>.

Such identifying information shall include, if possessed by YOU, the name, address, phone numbers, Internet Protocol (IP) addresses, Media Access Control (MAC) addresses, and email addresses that are associated with each of the above.

UNITED STATES DISTRICT COURT
For the Northern District of California

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UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

ART OF LIVING FOUNDATION,

No. C 10-05022 LB

Plaintiff,

v.

**ORDER RE PLAINTIFF'S MOTION
FOR ADMINISTRATIVE RELIEF TO
TAKE EXPEDITED DISCOVERY
[ECF No. 5]**

DOES 1-10,

Defendant(s).

I. INTRODUCTION

On November 5, 2010, Plaintiff Art of Living Foundation filed this lawsuit against Doe Defendants, asserting claims for copyright infringement under federal law and misappropriation of trade secrets, defamation, and trade libel under California law. *See* Complaint, ECF No.1. On November 9, 2010, Plaintiff filed the instant Motion for Administrative Relief to Take Expedited Discovery pursuant to Federal Rule of Civil Procedure 26(d). ECF No. 5. Specifically, Plaintiff requests that the Court allow it to serve subpoenas on two third-parties to obtain information identifying the Doe Defendants so that Plaintiff can complete service of process on them.

As discussed below, Plaintiff has demonstrated that: (1) the Doe Defendants are real people who may be sued in federal court; (2) it has unsuccessfully attempted to identify the Doe defendants prior to filing this Motion; (3) its claims against the Doe Defendants could survive a motion to dismiss; and (4) there is a reasonable likelihood that service of the proposed subpoenas on the two third-parties will lead to information identifying the Doe Defendants. The Court therefore finds that

1 Plaintiff has established good cause exists to allow it to engage in this preliminary discovery.
2 Accordingly, the Court **GRANTS** Plaintiff's Motion.

3 **II. BACKGROUND**

4 Plaintiff is the United States chapter of The Art of Living Foundation, an international
5 educational and humanitarian organization that offers courses focusing on Sudarshan Kriya – a
6 rhythmic breathing exercise – and its related practices. Compl. ¶¶ 2, 3, ECF No. 1 at 2. Plaintiff
7 alleges that the Doe Defendants “are disgruntled former student-teachers and students” who have
8 “perpetuated an attack-campaign against Plaintiff” by creating two blogs where they published
9 Plaintiff's confidential trade secrets and copyrighted material and made false and defamatory
10 statements about Plaintiff and its teachings. *Id.* ¶¶ 4-7. Specifically, Plaintiff alleges that beginning
11 in November 2009, the Doe Defendants started a blog entitled, “Leaving the Art of Living,” located
12 at artoflivingfree.blogspot.com. *Id.* ¶ 53. Plaintiff further alleges that a year later, in November
13 2010, the Doe Defendants started a second blog entitled, “Beyond the Art of Living,” located at
14 aolfree.wordpress.com. *Id.* ¶ 54. According to Plaintiff, the Doe Defendants regularly post
15 defamatory comments about Plaintiff and Ravi Shankar and have reproduced and displayed
16 Plaintiff's copyrighted material and confidential trade secrets on the blogs. *Id.* ¶¶ 57, 60-63, 67, 68.
17 Because the individuals have published the statements under pseudonyms, Plaintiff does not know
18 their identities and is unable to name them in the Complaint or to complete service of process on
19 them. *Id.* ¶ 59; Motion, ECF No. 5 at 3; Declaration of Karl S. Kronenberger, ¶¶ 4, 6, 7, ECF No. 6
20 at 2, 5 6. Plaintiff therefore requests that, pursuant to Federal Rule of Civil Procedure 26(d), the
21 Court grant it leave to serve subpoenas on Google, Inc., and Automattic, Inc., which operate the sites
22 that host the blogs, so that Plaintiff may obtain the names and locations of the Doe Defendants.
23 Motion, ECF No. 5 at 4-5.

24 **III. DISCUSSION**

25 **A. Legal Standard for Leave to Take Early Discovery**

26 A court may authorize early discovery before the Rule 26(f) conference for the parties' and
27 witnesses' convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts in this district
28 generally consider whether a plaintiff has shown “good cause” for the early discovery. *See, e.g., IO*

1 *Group, Inc. v. Does I-65*, No. C 10-4377 SC, 2010 WL 4055667, at *2 (N.D. Cal. Oct. 15, 2010);
 2 *Semitoool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-277 (N.D. Cal. 2002). Other
 3 districts in the Ninth Circuit apply the same standard. *See, e.g., Texas Guaranteed Student Loan*
 4 *Corp. v. Dhindsa*, No. C 10-0035, 2010 WL 2353520, at * 2 (E.D. Cal. June 9, 2010); *United States*
 5 *v. Distribuidora Batiz CGH, S.A. De C.V.*, No C 07-370, 2009 WL 2487971, at *10 (S.D. Cal. Aug.
 6 10, 2009); *Yokohama Tire Crop. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 613-14 (D. Ariz.
 7 2001) (collecting cases and standards).

8 When the identity of defendants is not known before a complaint is filed, a plaintiff “should be
 9 given an opportunity through discovery to identify the unknown defendants, unless it is clear that
 10 discovery would not uncover the identities, or that the complaint would be dismissed on other
 11 grounds.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). In evaluating whether a plaintiff
 12 establishes good cause to learn the identity of Doe defendants through early discovery, courts
 13 examine whether the plaintiff (1) identifies the Doe defendant with sufficient specificity that the
 14 court can determine that the defendant is a real person who can be sued in federal court, (2) recounts
 15 the steps taken to locate and identify the defendant, (3) demonstrates that the action can withstand a
 16 motion to dismiss, and (4) proves that the discovery is likely to lead to identifying information that
 17 will permit service of process. *Io Group*, 2010 WL 4055667 at * 1; *Columbia Ins. Co. v.*
 18 *Seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999).

19 **B. Plaintiff Has Shown Good Cause**

20 Here, Plaintiff has made a sufficient showing under each of the four factors listed above to
 21 establish good cause to permit it to engage in early discovery to identify the Doe Defendants.

22 First, Plaintiff has identified the possible Doe defendants with sufficient specificity by
 23 identifying the pseudonyms they have used to post defamatory statements about Plaintiff and to post
 24 Plaintiff’s copyrighted materials and trade secrets. *See Kronenberger Decl.*, ¶¶ 3, 4, 6, 7, ECF No. 6
 25 at 2, 6.

26 Second, Plaintiff has adequately described the steps taken to locate and identify the Doe
 27 defendants. *See Kronenberger Decl.*, ¶ 3, ECF No. 6 at 3. Plaintiff has reviewed the posts on the
 28 Blogspot and Wordpress blogs to ascertain information identifying the blogs’ respective authors and

1 contributors. *Id.* However, the individuals have used fictitious names when posting their statements
2 about Plaintiff. *Id.* ¶¶ 3, 4, 6, 7.

3 Third, reviewing Plaintiff's Complaint, Plaintiff has sufficiently asserted the essential elements
4 and facts in support of each of its four claims. *See* Compl. ECF No. 1 at 13-18.

5 Fourth, Plaintiff has demonstrated that the subpoena seeks information likely to lead to
6 identifying information that will allow Plaintiff to effect service of process on the Doe defendants.
7 The first subpoena is directed to Google, Inc., which owns Blogger, the host of the Blogspot Blog,
8 and seeks account information, such as the name, address, phone number, Internet protocol (IP)
9 address, Media Access Control (MAC) address, and email addresses associated with: (1) the
10 individual(s) who established and maintain control of the blog located at
11 artoflivingfree.blogspot.com; (2) the Blogger User Profile associated with the blog: AoL-Free; and
12 (3) the email account reklawyksekul@gmail.com. *See* Ex. A to Kroenenberger Decl., ECF No. 6-1
13 at 7. In its second proposed subpoena directed to Automattic, Inc., Plaintiff seeks information
14 sufficient to identify the user data and account holder of: (1) the individual(s) who established and
15 maintain control of the blog located at aolfree.wordpress.com; (2) and the WordPress usernames
16 "Skywalker," "Peaceful Warrior," "Prosecutor," and "Aolwhistleblower"; and (3) the Gravatar
17 profiles for "Aolwhistleblower," "Mcauthon," "Skyklim," and "artoflivingfeedback" associated with
18 the blog. Thus, the information sought is minimally intrusive on Google, Inc. and Automattic, and
19 the subpoenas are narrowly tailored to seek only information that will allow Plaintiff to identify
20 those operating the blogs and posting the alleged defamatory statements and Plaintiff's intellectual
21 property. *See* Ex. B to Kronenberger Decl., ECF No. 6-1 at 9-14.

22 Taken together, the Court finds that the foregoing factors demonstrate good cause exists to grant
23 Plaintiff leave to conduct early discovery to identify the Doe Defendants. *See Semitool*, 208 F.R.D.
24 at 276. Further, the Court finds that early discovery furthers the interests of justice and poses little,
25 if any, inconvenience to the subpoena recipients. Permitting Plaintiff to engage in this limited, early
26 discovery is therefore consistent with Rule 26(d).

27 ///

28 ///

IV. CONCLUSION

For the reasons stated above,

The Court **GRANTS** Plaintiff's Motion for Administrative Relief (ECF No. 5) as follows.

Plaintiff may serve discovery on Google, Inc., and Automattic, Inc., to obtain information regarding the identities of the Doe Defendants in accordance with the following procedure.

1. Plaintiff shall issue and serve the proposed subpoenas attached as Exhibits A and B to the Kronenberger Declaration on Google, Inc., and Automattic, Inc., respectively, along with a copy of this Order.

2. Google Inc. and Automattic, Inc., will have 20 days from the date of service upon them to serve the account holders with a copy of the subpoena and a copy of this Order. Google, Inc. and Automattic, Inc., may provide notice using any reasonable means, including written notice sent to the account holder's last known address, transmitted either by first-class mail or via overnight service.

3. The account holders shall have 30 days from the date of service upon them to file any motions with this Court contesting the subpoena (including a motion to quash or modify the subpoena). If that 30-day period lapses without an account holder contesting the subpoena, Google, Inc., and Automattic, Inc., shall have 10 days to produce the information responsive to the subpoena to Plaintiff.

4. Plaintiff shall be responsible for reimbursing Google, Inc. and Automattic, Inc., all reasonable costs of: (1) compiling the requested information; (2) providing pre-disclosure notifications to the account holders; and (3) all other reasonable costs and fees incurred responding to discovery. Google, Inc., and Automattic, Inc., shall provide Plaintiff with the amount of this reasonable payment upon the termination of the targeted account holders' 30-day notice period.

IT IS SO ORDERED.

Dated: December 17, 2010



LAUREL BEELER
United States Magistrate Judge

UNITED STATES DISTRICT COURT
For the Northern District of California