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9 Attorneys for Defendant
Google Inc. and YouTube, LLC
10

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 CINDY LEE GARCIA, an individual,
15 Plaintiff,

16 v.

17 NAKOULA BASSELEY NAKOULA,
an individual also known as SAM
18 BACILE, MARK BASSELEY
YOUSSEF, ABANOB BASSELEY
19 NAKOULA, MATTHEW NEKOLA,
AHMED HAMDY, AMAL NADA,
20 DANIEL K. CARESMAN, KRITBAG
DIFRAT, SOBHI BUSHRA, ROBERT
21 BACILY, NICOLA BACILY,
THOMAS J. TANAS, ERWIN
22 SALAMEH, YOUSSEFF M.
BASSELEY, and/or MALID
23 AHLAWI; GOOGLE, INC., a
Delaware Corporation; YOUTUBE,
24 LLC, a California limited liability
company, and DOES 1 through 10,
25 inclusive,

26 Defendants.
27
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Case No. CV-12-8315-MWF (VBKx)

Assigned to the Honorable Michael W. Fitzgerald

OBJECTIONS OF GOOGLE INC.
AND YOUTUBE, LLC TO
PLAINTIFF'S NOTICE OF REQUEST
UNDER CENTRAL DISTRICT
LOCAL RULE 7-8 TO CROSS-
EXAMINE DECLARANTS

Date: December 3, 2012
Time: 10:00 a.m.
Courtroom: 1600

1 Defendants Google Inc. and YouTube, LLC (collectively the “YouTube
2 Defendants”) hereby object to Plaintiff Cindy Lee Garcia’s Notice of Request
3 Under Central District Local Rule 7-8 to Cross-Examine Declarants Submitted by
4 Defendants Google Inc. and YouTube, LLC. [Dkt. No. 35.]

5 I. ARGUMENT

6 A. Timothy L. Alger

7 There is no justification for cross-examination of Timothy L. Alger, the
8 YouTube Defendants’ lead attorney in this matter. Examining opposing counsel in
9 connection with pending litigation is disfavored. “The practice of forcing trial
10 counsel to testify as a witness . . . has long been discouraged, and recognized as
11 disrupting the adversarial nature of our judicial system.” *Shelton v. American*
12 *Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986) (internal citations omitted)
13 (quoting *Hickman v. Taylor*, 329 U.S. 495, 513 (1947) (stating that such
14 examinations cause “the standards of the profession [to] suffer”). Because of the
15 potential for abuse, the examination of an opponent’s attorney is permitted in rare
16 circumstances, and only after it is shown by the requesting party to be both proper
17 and necessary. *American Cas. Co. of Reading, Pa. v. Krieger*, 160 F.R.D. 582, 588
18 (S.D. Cal. 1995). “Courts have reached this conclusion even where it is clear that
19 the attorney is a witness to relevant, nonprivileged events and/or conversations.”
20 *Id.*

21 The Eighth Circuit articulated a test that has been used by courts throughout
22 the nation, including by courts within this Circuit, limiting depositions of opposing
23 counsel to those rare situations where: (1) no other means exist to obtain the
24 information, (2) the information sought is relevant and nonprivileged, and (3) the
25 information is crucial to the preparation of the case. *Shelton*, 805 F.2d at 1327; *see*
26 *also Doubleday v. Ruh*, 149 F.R.D. 601, 613 (E.D. Cal. 1993) (noting the frequency
27 with which this test is applied).
28

1 Plaintiff cannot meet these standards, and she does not even attempt to do so
2 in her Notice.

3 First, there are alternative ways to obtain the information in Mr. Alger's
4 declaration. Plaintiff does not identify what information she is seeking to obtain by
5 cross-examining Mr. Alger, but her counsel has stated, both in communications
6 with Mr. Alger and to various public media outlets, that Plaintiff challenges the
7 authenticity of the Personal Release and Cast Deal Memo ("Release") signed by
8 Plaintiff, in which she assigns "all rights necessary for the development, production
9 and exploitation of the Motion Picture, whether denominated copyrights,
10 performance rights, or publicity rights . . ." (Declaration of Timothy L. Alger [Dkt.
11 No. 34] ¶ 7.)

12 Any examination regarding the authenticity of the Release, however, is best
13 directed to Plaintiff herself, who appears to have signed the Release and included in
14 it her personal phone number and Social Security number, and to Defendant
15 Youssef or others who worked on the film and witnessed Plaintiff's signing of the
16 Release. Mr. Alger has no personal knowledge about the authenticity of the
17 Release. The primary purpose behind Mr. Alger's declaration was to explain why
18 the release was submitted to the Court at this time, and how it came into Mr.
19 Alger's possession. (Alger Decl. ¶ 4.)

20 Second, Plaintiff's failure to identify any information she hopes to obtain by
21 cross-examining Mr. Alger makes it impossible for the Court to make a finding that
22 it is "relevant and nonprivileged." Whenever opposing counsel in litigation is
23 subject to examination, there is a substantial risk that the questioning will cross into
24 privileged territory, imposing substantial burden on the litigants and the Court. As
25 the *Shelton* court observed:

26 Taking the deposition of opposing counsel not only
27 disrupts the adversarial system and lowers the standards
28 of the profession, but it also adds to the already
burdensome time and costs of litigation. It is not hard to

1 imagine additional pretrial delays to resolve work-product
2 and attorney-client objections, as well as delays to resolve
3 collateral issues raised by the attorney's testimony.
4 Finally, the practice of deposing opposing counsel
5 detracts from the quality of client representation. Counsel
6 should be free to devote his or her time and efforts to
7 preparing the client's case without fear of being
8 interrogated by his or her opponent. Moreover, the
9 'chilling effect' that such practice will have on the
10 truthful communications from the client to the attorney is
11 obvious.

12 *Shelton*, 805 F.3d at 1327.

13 Any questioning of Mr. Alger beyond the facts already stated under oath in
14 his declaration will undoubtedly delve into subject matter protected by the work
15 product doctrine and/or attorney client privilege, which are not the proper subject of
16 cross-examination.

17 Third, Plaintiff has failed to establish that *any* information contained in Mr.
18 Alger's declaration is crucial to the preparation of the case. Obtaining further detail
19 through cross-examination about the timing of the submission to the Court, which
20 was the primary purpose of Mr. Alger's declaration, is by no means crucial to
21 Plaintiff's preparation of her case. Witness examination regarding the authenticity
22 of the Release, which might, indeed, go to the heart of Plaintiff's case, should
23 involve those who worked on the film, including Plaintiff, Mr. Youssef, and
24 others—not the YouTube Defendants' counsel.

25 **B. Mark Basseley Youssef**

26 The YouTube Defendants take no position regarding Plaintiff's request to
27 cross-examine Mark Basseley Youssef. However, as explained in Mr. Alger's
28 declaration, Mr. Youssef is currently detained at the Metropolitan Detention
Facility ("MDC") in downtown Los Angeles. He is in the Special Housing Unit at
MDC and is segregated from the main population. Due to Mr. Youssef's detention,
he is not "reasonably available" to the YouTube Defendants, though he may be
otherwise available to the Court. *See* L.R. 7-8. Notwithstanding Mr. Youssef's
availability, the Court should consider his declaration and the Release attached as

1 Exhibit 1, as it is material to the Court's consideration of Plaintiff's Motion for
2 Preliminary Injunction.

3
4 **II. CONCLUSION**

5 For the foregoing reasons, Plaintiff's request for cross-examination should be
6 denied.

7 DATED: November 30, 2012

PERKINS COIE LLP

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9 By: /s/ Timothy L. Alger
10 Timothy L. Alger

11 Attorneys for Defendants
12 Google Inc. and YouTube, LLC
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PROOF OF SERVICE

I, Pamela Villeral, declare,

I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1888 Century Park East, Suite 1700, Los Angeles, California 90067-1721. On the date signed below, I served the documents named below on the parties in this action as follows:

OBJECTIONS OF GOOGLE INC. AND YOUTUBE, LLC TO PLAINTIFF'S NOTICE OF REQUEST UNDER CENTRAL DISTRICT LOCAL RULE 7-8 TO CROSS-EXAMINE DECLARANTS

Upon the parties named below as follows: (See attached service list.)

(BY MAIL) I caused the above referenced document(s) to be placed in an envelope, with postage thereon fully prepaid, and placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of the firm for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(FEDERAL) I declare under penalty of perjury under the laws of the United States of America the above it true and correct.

Executed on **November 30, 2012**, at Los Angeles, California.

Pamela Villeral
Pamela Villeral

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SERVICE LIST

Defendant

Nakoula B. Nakoula aka Mark Basseley Youssef
Metropolitan Detention Center.
Inmate # 56329-112.
180 N. Los Angeles St.
Los Angeles, CA 90012.