

1 MARY CUMMINS
2 Plaintiff
3 645 W. 9th St. #110-140
4 Los Angeles, CA 90015
5 In Pro Per
6 Telephone: (310) 877-4770
7 Email: mmmaryinla@aol.com

8 UNITED STATES DISTRICT COURT
9
10 CENTRAL DISTRICT OF CALIFORNIA
11
12 WESTERN DIVISION

11 MARY CUMMINS) Case No. CV11 08081 DMG (MANx)
12 *Plaintiff*)
13 v.)
14) PLAINTIFF’S RESPONSE TO
15) DEFENDANTS’ OPPOSITION TO
16) MOTION TO COMPEL
17) COMPLIANCE WITH SUBPOENA
18)
19) Date: July 24, 2012
20) Time 10:00 a.m.
21) Courtroom: 580
22) Magistrate Judge Margaret A. Nagel
23)

24 Plaintiff responds to Defendants’ opposition to Plaintiff’s motion to compel
25 compliance with subpoena.

26 **I. INTRODUCTION**

27 Plaintiff sent a subpoena to Google April 2012 [Declaration of Mary Cummins
28 (“Cummins Decl.”)] Plaintiff was told by Google many times in writing and on the
phone that they would comply with the subpoena. Google did not give Plaintiff the
data requested after many requests. Plaintiff was forced to file a motion to compel. The
filed motion has a hearing date. After Plaintiff sent a copy of the motion to compel to
Google and notified them of the hearing date Google stated June 27, 2012 at 12:21

1 p.m. that they would email the data within the hour. Google stated Defendants stated
2 they would not file a motion to quash. Google never sent the data even though Plaintiff
3 repeatedly asked for the data.

4 Plaintiff filed a motion to extend discovery period and time to add additional
5 parties. The purpose of the Google subpoena is to discover the true identities of the
6 John Does. Plaintiff believes some of the John Does are Defendant Amanda Lollar.
7 Because Defendants' attorney MacPhail and Google both stalled on the response to the
8 subpoena the discovery time period elapsed. If Defendants and Google did not stall on
9 the subpoena, the data would have been received in time and additional parties could
10 have been added.

11 Plaintiff is not an attorney but a real estate appraiser. Plaintiff did not go to law
12 school and is most certainly not a "sophisticated litigant" as Defendants' attorney
13 Stephen MacPhail stated. The written motions in this case clearly show that while they
14 are well typed they were written by a pro se individual. The fact that Plaintiff lost the
15 Texas case clearly shows Plaintiff is not a "sophisticated litigant."

16 **II. FACTUAL BACKGROUND**

17 At issue here is only one subpoena to Google. Plaintiff needs to know the true
18 names of the John Does in order to add them to the lawsuit and as witnesses. Plaintiff
19 believes that Defendant Amanda Lollar is one or more of the John Does.

20 Plaintiff sent one subpoena signed by Plaintiff directly to Google. Plaintiff then sent
21 another subpoena via process server to Google using On-call legal services. If Google
22 had responded in a timely manner as they stated they would, the data would have been
23 received before the discovery and time to add additional parties deadlines. Defendants
24 and Google's stalling tactics caused Plaintiff to miss the deadlines.

25 Defendants' attorney did ask Plaintiff to withdraw her subpoenas. Plaintiff
26 originally agreed until she realized she would then be out of the discovery time period.
27
28

1 Plaintiff then stated she would not withdraw the subpoena. Plaintiff told Defendants'
2 attorney a few times that she intended to file a motion to compel.

3 Defendants' attorney MacPhail stated in Defendants' motion "Bat World Sanctuary
4 prevailed on all of its causes of action and judgment was entered against Plaintiff for
5 \$6.1 million." Defendants' did not prevail on all their causes of action. An order has
6 not yet been signed or entered against Plaintiff. Motion objecting to the order was filed
7 along with motion for new trial. Plaintiff already wrote an appeal.

8 **III. LEGAL ANALYSIS**

9 **A. Timeliness of motion to compel, procedural issues**

10 Plaintiff has been in communication with Defendants' attorney MacPhail. Plaintiff
11 sent a notice of subpoena to Defendants. Plaintiff informed MacPhail when she
12 received the items. Plaintiff informed MacPhail about her communications with
13 Google. Plaintiff believes these communications complied with the meet and confer
14 requirements. Plaintiff did not know that a discovery motion must be filed jointly.
15 Plaintiff is not an attorney.

16 **B. Legal status of subpoena**

17 Plaintiff first sent out subpoenas by fax, email and USPS. Plaintiff then realized she
18 must file a notice of subpoena. Plaintiff filed that three days after sending out the
19 subpoenas. Plaintiff then realized the subpoenas needed to be served by a process
20 server. Plaintiff then had a process server send new subpoenas. One recipient of the
21 subpoena stated that the clerk must sign the subpoena because Plaintiff is not an
22 attorney. Plaintiff then had the clerk sign the subpoena and re-served it. Subpoena was
23 legally served on Google.

24 The subpoena stated the data should be sent within 30 days. This would have been
25 from receipt. Had Google sent the data 30 days from receipt, that would have been
26 before the discovery cut-off.
27
28

1 The subpoena is not overly broad. As per Plaintiff's motion for temporary
2 injunction, the dates on the blogs can be changed. In one blog the dates were
3 intentionally changed to make it appear that the posts were outside of the statute of
4 limitations when they were not. Plaintiff attached as exhibits two copies of one blog.
5 One printed a year ago, one printed recently. It's clear that the dates were changed.

6 The subpoena sought the identities of the John Doe defendants. Plaintiff believes
7 that Defendant Lollar is one or more of the John Does. Plaintiff also believes that
8 Defendant is working in concert with the John Does. Plaintiff needs their identities as
9 they are witnesses.

10 **III. CONCLUSION**

11 Based on the foregoing, Plaintiff respectfully requests that the court approves
12 Plaintiff's motion to compel.

13
14 Respectfully submitted,

15
16 _____
17 Mary Cummins, Plaintiff
18 Dated: July 5, 2012
19 645 W. 9th St. #110-140
20 Los Angeles, CA 90015
21 In Pro Per
22 Telephone: (310) 877-4770
23
24
25
26
27
28

1 PROOF OF SERVICE BY MAIL
2 (FRCivP 5 (b)) or
3 (CCP 1013a, 2015.5) or
4 (FRAP 25 (d))

5 I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles,
6 California 90015-1640. I am over the age of eighteen years.

7 I further declare that on the date hereof I served a copy of:

8 **PLAINTIFF'S RESPONSE TO DEFENDANTS' OPPOSITION TO MOTION**
9 **TO COMPEL COMPLIANCE WITH SUBPOENA**

10 on the following by placing a true copy thereof enclosed in a sealed envelope
11 addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los
12 Angeles, CA 90015-1640.

13 **Stephen M. MacPhail**
14 Bragg & Kuluva
15 555 S. Flower St., #600
16 Los Angeles, CA 90071

17 I also faxed a copy to Stephen M. MacPhail at (213) 612-5712.

18 I declare under penalty of perjury, under the laws of the State of California, that the
19 foregoing is true and correct.

20 Executed this day, July 5, 2012, at Los Angeles, California

21 Respectfully submitted,

22
23 _____
24 Mary Cummins, Plaintiff
25 Dated: July 5, 2012
26 645 W. 9th St. #110-140
27 Los Angeles, CA 90015
28 In Pro Per
Telephone: (310) 877-4770

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. I have told MacPhail to feel free to correct me if I don't follow a rule or regulation properly. I told him I am not intentionally trying to violate a rule or regulation. While I've read the court rules, I am not an attorney. I do not have the funds to hire an attorney because of Defendants' actions against me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 5th day of July 2012 at Los Angeles, California

Mary Cummins