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12 *Pro Hac Vice Application Forthcoming

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 *In re Ex Parte* Application of
17 FREDRIC N. ESHELMAN,
18 Applicant,
19 For an Order Pursuant to 28 U.S.C. § 1782
20 Granting Leave to Obtain Discovery for Use in
21 Foreign Proceedings.

CASE NO. 5:23-MC-80015

**DR. ESHELMAN'S EX PARTE APPLICATION
FOR AN ORDER PURSUANT TO 28 U.S.C.
§ 1782 GRANTING LEAVE TO OBTAIN
DISCOVERY FOR USE IN FOREIGN
PROCEEDINGS**

1 Petitioner Fredric N. Eshelman (“Dr. Eshelman”), through counsel, applies to the Court for an
 2 order under 28 U.S.C. § 1782(a) granting him leave to issue subpoenas to Google LLC (“Google”) to
 3 produce documents and give testimony for use in contemplated lawsuits against an anonymous John Doe
 4 in Germany and India. Dr. Eshelman seeks this discovery to obtain identifying information (IP addresses,
 5 phone numbers, and names) associated with a pseudonymous email account used to spread defamatory
 6 communications about him, so that he may identify and locate Doe for the litigation. As explained in the
 7 accompanying memorandum, this Application meets each of the statutory and discretionary factors
 8 routinely considered in determining whether to grant discovery under Section 1782.

9 The Court should consider this Application *ex parte*. “Applications brought pursuant to 28 U.S.C.
 10 § 1782 typically are considered on an *ex parte* basis, since ‘parties will be given adequate notice of any
 11 discovery taken pursuant to the request and will then have the opportunity to move to quash the discovery
 12 or to participate in it.’” *In re Apple Retail UK Ltd.*, No. 20-mc-80109, 2020 WL 3833392, at *2 (N.D.
 13 Cal. July 8, 2020) (quoting *IPCom GMBH & Co. KG v. Apple Inc.*, 61 F. Supp. 3d 919, 922 (N.D. Cal.
 14 2014)); *see also In re Republic of Ecuador*, No. 10-mc-80225, 2010 WL 3702427, at *2 (N.D. Cal. Sept.
 15 15, 2010); *In re Letters Rogatory from Tokyo Dist.*, 539 F.2d 1216, 1219 (9th Cir. 1976).

16 This Application is supported by the memorandum of points and authorities filed herewith, and
 17 the Declarations of Daniel P. Watkins (“Watkins Decl.”) and Dr. Fredric N. Eshelman (“Eshelman
 18 Decl.”). A proposed order is filed herewith, and the proposed subpoenas to be served on Google are
 19 attached to this Application as **Exhibits A and B**.

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 21 DATED: January 13, 2023

Respectfully submitted,

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/s/ William J. Cooper

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