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9 Attorneys for Nonparty Gerrit Lösch

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

12 JOSE LOPEZ, an Individual,

13 Plaintiff,

14 v.

15 DOE 1, LINDA VISTA CHURCH; DOE
16 2, SUPERVISORY ORGANIZATION;
DOE 3, PERPETRATOR; and DOES 4
17 through 100, inclusive,

18 Defendants.

CASE NO. 37-2012-00099849-CU-PO-CTL

**OPPOSITION OF NONPARTY GERRIT
LOSCH TO PLAINTIFF'S *EX PARTE*
APPLICATION REGARDING VACATING
MOTION TO QUASH AND SETTING
DEPOSITION DATES**

Date: March 5, 2014
Time: 8:30 a.m.
Dept: C-65
Judge: Joan M. Lewis
Trial Date: June 27, 2014

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F I L E D
Clerk of the Superior Court
MAR 04 2014
By: _____ Deputy
14 MAR 2014 350

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2 **I. INTRODUCTION**

3 Specially-Appearing Nonparty GERRIT LÖSCH submits the following Opposition to
4 Plaintiff JOSE LOPEZ's ("Plaintiff") Ex Parte Application Regarding Vacating Motion To Quash
5 And Setting Deposition Dates ("Ex Parte") on the grounds that there is no authority to support
6 Plaintiff's request to deprive Nonparty Gerrit Losch of his right to have his Motion to Set Aside
7 and/or Quash ("Motion to Quash") heard and Mr. Losch has not been properly served with a
8 deposition subpoena nor has service of a deposition notice been accepted on his behalf.

9 **II. ARGUMENT**

10 The majority of Plaintiff's arguments with respect to Nonparty Gerrit Losch are based upon
11 the fatally flawed presumption that Mr. Losch is a party to this case and therefore, is bound by the
12 deadlines and cutoffs that govern discovery in this matter. However, as Plaintiff knows, Mr. Losch
13 is not and has never been a party to this case, and therefore, Mr. Losch's Motion to Quash has been
14 timely filed and he is entitled to have it heard by this Court. Plaintiff's attempts to circumvent Mr.
15 Losch's rights of due process by trying to preempt Mr. Losch's Motion to Quash from being heard
16 and, if that fails, by arguing his opposition to Mr. Losch's Motion to Quash in the form of an ex
17 parte application before Mr. Losch's Motion is ever heard, must fail.¹

18 Plaintiff argues that Mr. Losch cannot challenge the Court's order of January 2, 2104
19 because the motion and discovery cutoff dates applicable to the parties in this matter had passed by
20 the time the Court issued its Order. Plaintiff's argument ignores the fact that Mr. Losch is not a
21 party to this action and therefore, is not bound by the cutoffs in this case. The sections of the
22 California Code of Civil Procedure that Plaintiff refers to in his Ex Parte Application specifically
23 refer to a "party," meaning a party to the case. Cal. Code of Civ. Proc. §2024.020, **Discovery**
24 **cutoff**, (a) provides: "Except as otherwise provided in this chapter, any party shall be entitled as a
25

26 ¹ Nonparty Gerrit Losch's Opposition necessarily addresses only those arguments in Plaintiff's Ex Parte Application
27 regarding Mr. Losch's Motion to Quash and do not address the portions of Plaintiff's Ex Parte Application that seek
28 relief regarding Defendant Watchtower.

1 matter of right to complete discovery proceedings on or before the 30th day, and to have motions
2 concerning discovery heard on or before the 15th day, before the date initially set for the trial of the
3 action.” Cal. Code of Civil Procedure, §2024.020(a). Similarly, Section 2024.050 (a) provides, in
4 relevant part, “On motion of any party, the court may grant leave to complete discovery
5 proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to
6 reopen discovery after a new trial date has been set.” Cal. Code Civ. Proc. § 2024.050. Therefore,
7 Plaintiff’s argument that Mr. Losch’s Motion to Quash is beyond the cutoffs in this case are not
8 applicable to Mr. Losch, a nonparty, and Plaintiff has not cited any authority to the contrary. The
9 *Pelton-Shepherd* case cited by Plaintiff deals only with discovery motions between parties to that
10 case, not to nonparties like Mr. Losch. (*See generally, Pelton-Shepherd Industries, Inc. v. Delta*
11 *Packaging Products, Inc.*, 165 Cal.Spp.4th 1568.) Nonparty Mr. Losch timely filed his pending
12 Motion to Quash on February 5, 2014 and set the Motion to be heard on the first date the Court had
13 available – May 30, 2104.

14 After learning that the Court believes that its January 2, 2014 order requires Mr. Losch to
15 appear for his deposition before the expiration of the 90-day completion period the Court set for the
16 parties, Mr. Losch filed his Ex Parte application to advance the hearing date on his Motion to Quash
17 to a date prior to April 2, 2104, the end of the 90-day compliance period set by the Court. Mr.
18 Losch is entitled to have his Motion heard before the Court sets a date for the deposition that is the
19 subject of Mr. Losch’s Motion to Quash. Plaintiff’s claim that Mr. Losch had to first seek relief
20 from the discovery cutoff date pursuant to Cal. Code Civ. Proc. §2024.020 before filing his Motion
21 is without merit. As set forth above, Cal. Code Civ. Proc. §2024.020 applies only to parties to the
22 case who are subject to the discovery cutoffs and motion cutoffs that govern the case. If Plaintiff’s
23 theory were correct, then nonparties like Mr. Losch would never have a chance to challenge orders
24 that are issued close to or after cutoffs or orders of which nonparties might not be made aware until
25 after cutoffs had passed.

26 Even more troubling than Plaintiff’s argument that nonparties can be deprived of their right
27 to challenge jurisdiction and other fundamental rights of due process is his attempt to mislead the
28 Court by claiming that, regardless of the fact that Mr. Losch is not a party to the case and has never

1 been served with a deposition subpoena, the attorney for Defendant Linda Vista Spanish
2 Congregation accepted service of a notice of deposition on behalf of Mr. Losch. On pages 7-8 of his
3 Ex Parte application, Plaintiff describes email correspondence between his attorneys and James
4 McCabe, attorney for Linda Vista Spanish Congregation, and infers that during that correspondence
5 on September 16, 2013, attorney McCabe indicated that he would accept service of the notice of
6 deposition of, among others, Mr. Losch. (Plaintiff's Ex Parte, pp. 8-9.) However, this is simply not
7 true. (See Declaration of James McCabe.)

8 Instead, the actual sequence of events with respect to Mr. Losch is that on September 15,
9 2013, Mr. McCabe sent a letter to Plaintiff's counsel specifically stating that "We will not be
10 providing Gerrit Losch for deposition." (See Exhibit 7 to Declaration of Devin M. Storey in support
11 of Plaintiff's Ex Parte Application.) From that point forward, the deposition of Mr. Losch is not a
12 topic that Mr. McCabe negotiated with Plaintiff's counsel nor did Mr. McCabe ever indicate that he
13 could or would provide dates for or produce Mr. Losch for deposition. (See McCabe Decl., ¶ 4.)
14 However, it appears that Plaintiff's counsel has attached an email exchange that took place after Mr.
15 McCabe sent the letter in Exhibit 7 to his Declaration in a way that implies that Mr. McCabe may
16 have agreed to accept the service of a notice of deposition for Mr. Losch. (See Exhibit 9 to Storey
17 Decl.)

18 Mr. Losch respectfully directs the Court to the email chain attached to Exhibit 9 to Plaintiff's
19 Ex Parte, which has an email dated September 16, 2013 and time-stamped 1:12 PM on top of an
20 email dated September 16, 2013 and time-stamped 3:10 PM, indicating that the 1:12 PM email from
21 Mr. McCabe came before Mr. Storey's email of 3:10 PM. However, Mr. Storey describes the same
22 email exchange at pages 7-8 of his Ex Parte as though Mr. McCabe's 1:12 PM email was *in*
23 *response* to Mr. Storey's 3:10 PM email, thereby implying that Mr. McCabe had agreed to accept
24 service of notices of deposition to several individuals, including Mr. Losch. (See Exhibit 9 to
25 Storey Decl.; see also McCabe Decl. at ¶¶ 5-6.) However, Mr. McCabe did not agree to accept
26 service of a deposition notice for Mr. Losch, either in those emails with Mr. Storey or otherwise.
27 (McCabe Decl., ¶¶ 2-4.) Moreover, Mr. Losch has not authorized any attorney to accept service of a
28 deposition notice on his behalf.

1
2 **III. CONCLUSION**

3 Based upon the foregoing, Mr. Lösch respectfully requests that the Court deny Plaintiff's Ex
4 Parte Application insofar as it pertains to Mr. Losch and further requests that this Court grant Mr.
5 Losch's Ex Parte Application and advance the hearing date on his pending Motion to Quash from May
6 30, 2014, to a date prior to April 2, 2014.

7 Dated: March 4, 2014

MORRIS POLICH & PURDY LLP

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9 By: Megan S. Wynne
10 Megan S. Wynne, Esq.
11 Ashley A. Escudero, Esq.
12 Attorneys for Nonparty Gerrit Lösch
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1 PROOF OF SERVICE
2 (Code Civ. Proc., §§ 1013a, 2015)
3 *Jose Lopez v. Doe 1, Linda Vista Church, et al.; Case No. 37-2012-00099849-CU-PO-CTL*
4 *STATE OF CALIFORNIA, COUNTY OF SAN DIEGO*

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is One American Plaza, 600 West Broadway,
7 Suite 500, San Diego, California, 92101.

8 On March 4, 2014, I served the foregoing document described as:

9 **1. OPPOSITION OF NONPARTY GERRIT LOSCH TO PLAINTIFF'S EX PARTE**
10 **APPLICATION REGARDING VACATING MOTION TO QUASH AND**
11 **SETTING DEPOSITION DATES**

12 on the other parties in this action by placing a true copy thereof enclosed in sealed envelopes
13 addressed as follows:

14 Devin M. Storey
15 THE ZALKIN LAW FIRM
16 12555 High Bluff Drive, Suite 260
17 San Diego, CA 92130
18 (858) 259-3011
19 Fax: (858) 555-2312
20 dms@zalkin.com
21 **Attorneys for Plaintiff**

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4817 Santa Monica Avenue, Suite B
San Diego, CA 92107
(619) 224-2848
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Attorneys for Doe 1, Linda Vista Church

22 Rocky K. Copley
23 LAW OFFICES OF ROCKY K. COPLEY
24 225 Broadway, Suite 2100
25 San Diego, CA 92101
26 (619) 232-3131
27 Fax: (619) 232-1690
28 rkccopley@rkc-rocklaw.com

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New York, NY 10017
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Fax: (212) 681-6157
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Attorneys for Gerrit Lösch

Calvin Rouse, Esq. (*Pro Hac Vice*)
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100 Watchtower Drive
Patterson, NY 12563
(845) 306-1000
Fax: (845) 306.0709
calrouse@msn.com
Attorneys for Watchtower

24 ☒ **By Mail:** I caused each envelope, with postage thereon fully prepaid, to be placed in the
25 United States mail at San Diego, California. I am readily familiar with the practice of Morris Polich
26 & Purdy LLP for collecting and processing correspondence for mailing, said practice being that, in
27 the ordinary course of business, mail is deposited in the United States Postal Service the same day as
28 it is placed for collection.

☐ **By Facsimile:** I caused each document to be transmitted via the facsimile number(s) listed
on the attached service list. The facsimile machine I used complied with California Rules of Court,
rule 2003(3) and no error was reported by the machine pursuant to California Rules of Court, rule

1 2008(e).

2 ☐ **By Personal Service:** I delivered such envelope by hand to the offices of the addressee(s).

3 ☒ **By E-Mail:** I transmitted true copies of the documents via E-MAIL to the addressee(s).

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

6 Executed on March 4, 2014, at San Diego, California.

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9 Berri Krida-Pech
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Ashley A. Escudero, Esq., SBN250473
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9 Attorneys for Nonparty Gerrit Lösch

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

12 JOSE LOPEZ, an Individual,
13 Plaintiff,

14 v.

15 DOE 1, LINDA VISTA CHURCH; DOE
16 2, SUPERVISORY ORGANIZATION;
DOE 3, PERPETRATOR; and DOES 4
17 through 100, inclusive,

18 Defendants.

CASE NO. 37-2012-00099849-CU-PO-CTL

**DECLARATION OF JAMES McCABE, ESQ.
IN SUPPORT OF OPPOSITION OF
NONPARTY GERRIT LOSCH TO
PLAINTIFF'S *EX PARTE* APPLICATION
REGARDING VACATING MOTION TO
QUASH AND SETTING DEPOSITION
DATES**

Date: March 5, 2014
Time: 8:30 a.m.
Dept: C-65
Judge: Joan M. Lewis
Trial Date: June 27, 2014

22 I, James M. McCabe, declare as follows:

23 1. I am an attorney duly licensed to practice before all courts in the State of California
24 and am the owner of The McCabe Law Firm, APC. I am the attorney of record for Defendant
25 Linda Vista Spanish Congregation in this matter and have personal knowledge of the facts stated
26 herein. If called as a witness, I could and would competently testify to the following.

27 2. I have never been authorized to accept service of a deposition notice on behalf of

28 Lopez v Watchtower - Declaration of James McCabe 1
(L0493964).DOC

**DECLARATION OF JAMES McCABE, ESQ., IN SUPPORT OF OPPOSITION TO PLAINTIFF'S *EX PARTE*
APPLICATION REGARDING VACATING MOTION TO QUASH AND SETTING DEPOSITION DATES**

F I L E D
Clerk of the Superior Court
MAR 04 2014
By: _____ Deputy
MAR 4 4:35 PM

1 Gerrit Losch nor have I ever accepted service of a deposition notice on behalf of Gerrit Losch.

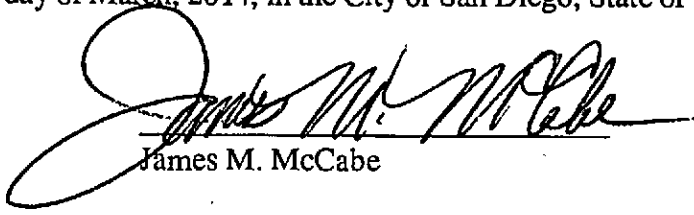
2 3. On September 15, 2013, I sent a letter to Plaintiff's counsel in this matter in which I
3 stated that "We will not be providing Gerrit Losch for deposition." This letter is attached to Mr.
4 Storey's Declaration as Exhibit 7.

5 4. At no time after I sent that letter did I negotiate dates for Mr. Losch's deposition nor
6 did indicate that I would produce Mr. Losch for a deposition nor did I accept service of a
7 deposition notice on his behalf.

8 5. I have reviewed Plaintiff's Ex Parte Application Regarding Vacating Motion To
9 Quash And Setting Deposition Dates ("Plaintiff's Ex Parte Application".) I have also reviewed the
10 email exchange attached to Mr. Storey's Declaration as Exhibit 9

11 6. In his Ex Parte Application, Plaintiff describes the email exchange attached to Mr.
12 Storey's Declaration as Exhibit 9 as though my 1:12 PM email was *in response* to Mr. Storey's 3:10
13 PM email, thereby implying that I had agreed to accept service of notices of deposition to several
14 individuals, including Mr. Losch. (See Exhibit 9 to Plaintiff's Ex Parte.) This is not the case – my
15 1:12 PM email was sent *before* Mr. Storey's 3:10 PM email, and therefore, was not referring to Mr.
16 Storey's question as to whether I was authorized to accept deposition notices for numerous individuals
17 listed in Mr. Storey's 3:10 PM email, one of whom is Gerrit Losch.

18 I declare under penalty of perjury and the laws of the State of California that the foregoing is
19 true and correct. Executed this 4th day of March, 2014, in the City of San Diego, State of California.

20
21 
22 James M. McCabe
23
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PROOF OF SERVICE

(Code Civ. Proc., §§ 1013a, 2015)

Jose Lopez v. Doe 1, Linda Vista Church, et al.; Case No. 37-2012-00099849-CU-PO-CTL
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is One American Plaza, 600 West Broadway, Suite 500, San Diego, California, 92101.

On March 4, 2014, I served the foregoing document described as:

1. DECLARATION OF JAMES McCABE, ESQ. IN SUPPORT OF OPPOSITION OF NONPARTY GERRIT LOSCH TO PLAINTIFF'S EX PARTE APPLICATION REGARDING VACATING MOTION TO QUASH AND SETTING DEPOSITION DATES

on the other parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Devin M. Storey THE ZALKIN LAW FIRM 12555 High Bluff Drive, Suite 260 San Diego, CA 92130 (858) 259-3011 Fax: (858) 555-2312 dms@zalkin.com Attorneys for Plaintiff	James M. McCabe THE MCCABE LAW FIRM, APC 4817 Santa Monica Avenue, Suite B San Diego, CA 92107 (619) 224-2848 Fax: (619) 224-0089 jim@mccablelaw.net Attorneys for Doe 1, Linda Vista Church
Rocky K. Copley LAW OFFICES OF ROCKY K. COPLEY 225 Broadway, Suite 2100 San Diego, CA 92101 (619) 232-3131 Fax: (619) 232-1690 rkcopley@rkc-rocklaw.com Calvin Rouse, Esq. (<i>Pro Hac Vice</i>) WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., LEGAL DEPARTMENT 100 Watchtower Drive Patterson, NY 12563 (845) 306-1000 Fax: (845) 306.0709 calrouse@msn.com Attorneys for Watchtower	Donald T. Ridley, Esq. THE MANDEL LAW FIRM 370 Lexington Avenue, Suite 505 New York, NY 10017 Tel: (212) 697-7383 Fax: (212) 681-6157 dtrdly@gmail.com Attorneys for Gerrit Lösch

☒ **By Mail:** I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Diego, California. I am readily familiar with the practice of Morris Polich & Purdy LLP for collecting and processing 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.

☐ **By Facsimile:** I caused each document to be transmitted via the facsimile number(s) listed

1 on the attached service list. The facsimile machine I used complied with California Rules of Court,
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3 ☐ **By Personal Service:** I delivered such envelope by hand to the offices of the addressee(s).

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

7 Executed on March 4, 2014, at San Diego, California.

8 
9 _____
10 Berri Krida-Pech
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