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Attorneys for Plaintiff Doe 1

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**DOE 1**, an individual,

Plaintiff,

v.

**GOOGLE INC.**, a Delaware corporation;  
and  
**JEH CHARLES JOHNSON**, Secretary of  
the Department of Homeland Security, in  
his official capacity, inclusive,

Defendants.

Case No. 3:16-cv-01876

**COMPLAINT FOR  
DECLARATORY RELIEF**

[28 U.S.C. § 2201; 19 U.S.C. § 1509]



1 Plaintiff Doe 1, by and through their attorneys of record, states and alleges as  
2 follows:

3 **INTRODUCTION**

4 1. This action arises from an administrative summons issued by an overseas  
5 Special Agent of Immigration and Customs Enforcement (ICE), an arm of the  
6 Department of Homeland Security (DHS), directed toward Defendant Google Inc. (the  
7 “Administrative Summons”).

8 2. The Administrative Summons, dated January 21, 2016, sought information  
9 about a Google Analytics account operated by Defendant Google for which Plaintiff  
10 Doe 1 is the subscriber.

11 3. Based on the contents of the Administrative Summons, as well as two  
12 similar summonses issued by the same ICE Special Agent to other online service  
13 providers, and contemporaneous news reports, Doe 1 is informed and believes that  
14 Doe 1 is the target of a campaign by politicians and law enforcement officials in the  
15 Republic of Korea to suppress speech—which, under the First Amendment, would be  
16 legal in the U.S.—on a website associated with the Google Analytics account identified  
17 in the Administrative Summons.

18 4. Doe 1 brings this action for declaratory relief because, despite Doe 1’s  
19 request that DHS withdraw the Administrative Summons, DHS has refused to withdraw  
20 it, and Google has threatened to comply with the Administrative Summons and produce  
21 records unless Doe 1 obtains an order from a court directing Google not to comply.

22 **JURISDICTION AND VENUE**

23 5. This Court has subject matter jurisdiction over Plaintiff’s claims because  
24 they involve the interpretation and application of the federal Customs Act and federal  
25 regulations issued under it. The jurisdiction of this court is therefore founded on 28  
26 U.S.C. § 1331.

27 6. Venue is proper under 28 U.S.C. § 1391 because many of the incidents,  
28 events, or omissions complained of and giving rise to the instant claims and controversy



1 occurred within the State of California and this District.

2 7. This Court has personal jurisdiction over Defendant Google because it is  
3 headquartered in and does substantial business in California.

4 **INTRADISTRICT ASSIGNMENT**

5 8. Pursuant to Local Civil Rules 3-2 and 3-5, this action should be assigned  
6 to the San Francisco Division because a substantial part of the events or omissions that  
7 gave rise to the claims occurred in San Francisco, where Google maintains offices, and  
8 because DHS maintains an office in San Francisco, which has been involved in this and  
9 prior related summonses.

10 **PARTIES**

11 9. Plaintiff Doe 1 is an individual, who is not a United States citizen and who  
12 resides outside of the United States. Doe 1 is the subscriber for the Google account at  
13 issue in the Administrative Summons (the "Google Account"). Because this litigation  
14 involves a highly sensitive personal matter and poses a risk of retaliation by foreign  
15 persons, Doe 1 seeks to proceed anonymously.

16 10. Defendant Jeh Charles Johnson is Secretary of the Department of  
17 Homeland Security. Mr. Johnson is sued in his official capacity.

18 11. Defendant Google Inc. is a Delaware corporation headquartered in this  
19 judicial district in Mountain View, California, and having offices, employees, and  
20 significant operations in this judicial district, including offices in San Francisco.

21 **FACTUAL ALLEGATIONS**

22 12. On January 21, 2016, Special Agent Barry Harsa signed a Summons to  
23 Appear and/or Produce Records (the Administrative Summons) directed to Google  
24 Legal Investigations Support, a section of Defendant Google.

25 13. The Administrative Summons was prepared on DHS Form 3115, and it  
26 states that it is issued under 19 U.S.C. § 1509 ("Section 1509").

27 14. Special Agent Harsa is an employee of the Department of Homeland  
28 Security in its Immigrations and Customs Enforcement division, and is based in the U.S.



1 Embassy in Seoul, Korea as a Deputy Attaché.

2 15. The Administrative Summons directs Google to produce the following  
3 information, which Special Agent Harsa wrote into Block 3 of the Administrative  
4 Summons:

5 Please provide any and all information regarding Tracking ID "UA-  
6 37617746-1" provided by Google Analytics, to include google account  
7 information, user profile, billing information, addresses and phone  
8 numbers, and the dates, times and Internet protocol addresses for logins  
9 from January 1, 2015 to present.

10 16. The Administrative Summons indicates that this information (the  
11 "Records") shall be produced "before the CBP Officer of ICE Special Agent named in  
12 Block 2 at the place, date, and time indicated."

13 17. Special Agent Harsa indicated his title of "Special Agent" and affiliation  
14 with the U.S. Embassy in Seoul in Block 2(A) of the Administrative Summons, giving the  
15 address of the U.S. Embassy and his telephone number in Korea (although that  
16 telephone number is redacted in the copy of the Administrative Summons that Doe 1  
17 received). This information, as well as Special Agent Harsa's additional role as an  
18 Attaché, is again stated in Block 6 of the Administrative Summons.

19 18. Special Agent Harsa left the "Date" section of the Administrative  
20 Summons, Block 2(B), blank, and in the "Time" section, Block 2(C), he wrote "ASAP."

21 19. Special Agent Harsa has previously issued at least two other  
22 administrative summonses, to Yahoo and Microsoft<sup>1</sup>.

23 20. On February 24, 2016, Google notified Doe 1 of the Administrative  
24 Summons.

25  
26 <sup>1</sup> On February 2, 2016, Doe 1 filed an action in this court for declaratory relief against  
27 Microsoft, case no. 3:16-cv-00545. Doe 1 dismissed that case on February 22, 2016,  
28 because DHS withdrew its Customs summons to Microsoft. Doe 1 does not believe this  
case is required to be related under Civil L.R. 3-12, but is unopposed to the cases being  
related at the Court's request.





1 of ascertaining the correctness of any entry, for determining the liability of any person  
2 for duty, fees and taxes due or duties, fees and taxes which may be due the United  
3 States, for determining liability for fines and penalties, or for insuring compliance with  
4 the laws of the United States administered by the United States Customs Service...”

5 28. The Administrative Summons to Google seeks information wholly  
6 unrelated to these Customs-related goals. Instead, the Administrative Summons is  
7 aimed at information from a Google Account from a non-U.S. account holder, related to  
8 a non-U.S. website with a non-U.S. audience. The only connection to the U.S. is that  
9 Doe 1 holds a Google Account—an activity that falls far outside of Section 1509’s  
10 statutory authorization. For this reason, the Administrative Summons is invalid.

11 29. In addition, only the Secretary of DHS or certain enumerated high-ranking  
12 deputies may issue a Section 1509 summons. Specifically, “no delegate of the  
13 Secretary below the rank of district director or special agent in charge” may issue a  
14 Section 1509 summons. 19 U.S.C § 1509(a).

15 30. Because the Administrative Summons was, on its face, signed by a  
16 Special Agent not qualified to do so under Section 1509, the Administrative Summons is  
17 further invalid and unenforceable.

18 31. A Section 1509 summons may only compel production of records or a  
19 personal appearance “within the customs territory of the United States.” 19 U.S.C.  
20 § 1509(a)(2); 19 C.F.R. § 163.7(b). The “customs territory of the United States” is  
21 defined as “only the States, the District of Columbia, and Puerto Rico.” 19 C.F.R.  
22 § 101.1.

23 32. Because the Administrative Summons, on its face, requests production of  
24 documents in Korea, which is beyond the “customs territory of the United States,” the  
25 Administrative Summons is further invalid and unenforceable.

26 33. The Administrative Summons is further invalid and unenforceable because  
27 it fails to indicate a specific date or time for production of Records. Rather, the  
28 Administrative Summons purportedly requires Google to produce the Records “ASAP.”



1 34. Despite the above problems, Defendant Google has still threatened to  
2 comply with the Administrative Summons and to produce Records to DHS—unless  
3 Doe 1 obtains a court order to the contrary.

4 35. To avoid irreparable harm stemming from the improper production of the  
5 Records sought by DHS, Plaintiff Doe 1 requests that this Court issue a declaratory  
6 judgment determining all parties' respective rights and duties under Section 1509 with  
7 respect to the Administrative Summons, as well as to any further Section 1509  
8 summons DHS may issue to Google in connection with Doe 1.

9 36. Under Rule 57 of the Federal Rules of Civil Procedure, Plaintiff Doe 1  
10 requests a speedy hearing of this action for a declaratory judgment.

11 **PRAYER FOR RELIEF**

12 Plaintiff prays for a judgment against Defendants as follows:

- 13 1. For a declaratory judgment that the Administrative Summons is invalid and  
14 unenforceable because it is beyond the statutory authority of Section 1509;
- 15 2. For a declaratory judgment that the Administrative Summons is otherwise  
16 invalid and unenforceable;
- 17 3. For temporary, preliminary, and permanent injunctive relief enjoining  
18 Defendant Google from producing any information to DHS in connection with the  
19 Administrative Summons;
- 20 4. For temporary, preliminary, and permanent injunctive relief enjoining DHS  
21 from enforcing the Administrative Summons; and
- 22 5. Such other and additional relief as the Court deems just and proper.

23  
24 Dated: April 11, 2016

**KRONENBERGER ROSENFELD, LLP**

25  
26 By: s/ Karl S. Kronenberger  
Karl S. Kronenberger

27 Attorneys for Plaintiff Doe 1  
28





CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Doe 1, an individual

(b) County of Residence of First Listed Plaintiff N/A (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Kronenberger Rosenfeld, LLP 150 Post St., Suite 520, San Francisco, CA 94108 (415) 955-1155

DEFENDANTS

Google Inc., a Delaware corporation; and Jeh Charles Johnson, Secretary of the Department of Homeland Security, in his official capacity, inclusive

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Labor, and Tax Suits.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2201
Brief description of cause: Declaratory relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/11/2016 SIGNATURE OF ATTORNEY OF RECORD s/ Karl S. Kronenberger

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.