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12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 In re *Ex Parte* Application of
16 Shueisha Inc.,
17
18 Applicant.

19 Case No.:

20 ***EX PARTE* APPLICATION OF
21 SHUEISHA INC. FOR AN
22 ORDER PURSUANT TO 28 U.S.C. §
23 1782 AUTHORIZING DISCOVERY
24 FOR USE IN FOREIGN
25 PROCEEDINGS;**

26 **AND**

27 **SUPPORTING MEMORANDUM OF
28 POINTS AND AUTHORITIES**

1 **EX PARTE APPLICATION**

2 Applicant Shueisha Inc. (“Applicant”) hereby makes this *ex parte* application for
3 an order pursuant to 28 U.S.C. § 1782 authorizing discovery for use in foreign
4 proceedings (“Application”). This Application seeks limited discovery from Google LLC,
5 Visa Inc., and Paypal, Inc., and is supported by the supporting memorandum below and
6 the Declarations of Hiroyuki Nakajima and Atsushi Ito filed concurrently herewith. The
7 proposed subpoenas to be served are attached to this Application as **Exhibits A, B and C.**

8 **SUPPORTING MEMORANDUM**

9 **I. BACKGROUND**

10 Applicant is an entertainment publishing company, located in Japan. Declaration
11 of Hiroyuki Nakajima (“Nakajima Decl.”) ¶ 1; Declaration of Atsushi Ito (“Ito Decl.”) ¶ 5.
12 Google LLC (“Google”) owns and operates “gmail.com,” “Google AdSense,” and
13 “googlegroups.com” and its principal office is located in Mountain View. Nakajima Decl.
14 ¶ 22 & Ex. 15 thereto. PayPal, Inc. (“PayPal”) is located in San Jose. Nakajima Decl. ¶ 23,
15 and Ex. 16 thereto. Visa Inc. (“Visa”) has its principal office in Foster City. Nakajima
16 Decl. ¶ 24, and Ex. 17 thereto.

17 Applicant is one of the largest entertainment publishing companies in Japan,
18 headquartered in Tokyo, Japan. Ito Decl. ¶ 5. Among other things, the company
19 specializes in the publication and distribution of Japanese comics and graphic novels
20 known as “manga,” in both tangible and digital media. *Id.* Applicant is the exclusive
21 licensee for distribution of the copyrighted manga at issue in this matter. *Id.*

22 In or about April 2024, Shuisha’s attorney’s investigated certain “pirate” websites
23 that – without authorization from Applicant, the exclusive licensee of the relevant
24 copyrights, or its agents or the law – had links offering downloads of Applicant’s mangas.
25 Ito Decl. ¶¶5 & 8 and Ex. 1 thereto; Nakajima Decl. ¶ 7 and Ex. 1 thereto. Applicant and
26 its counsel in Japan prepared spreadsheets memorializing the title of the original work, the
27 author of the original work, a link to the original work, a link to the infringing work, and

1 the title of the infringing work. Ito Decl. ¶¶ 6-8.

2 The original works that were the subject of those spreadsheets are Japanese comics
3 and graphic novels known as “manga.” Ito Decl. ¶ 5. The term “manga” describes a style
4 of Japanese comic books with a high degree of popularity in Japan among people of all
5 ages and walks of life, as well as elsewhere in the world. *Id.*

6 The pirate websites used the services of Cloudflare, Inc. (“Cloudflare”), a global
7 content delivery network. Nakajima Decl. ¶ 6. Applicant therefore obtained subpoenas,
8 pursuant to the Digital Millennium Copyright Act, from the Clerk of the United States
9 District Court for the Northern District of California. Cloudflare produced documents with
10 respect to pirate websites, including among other such sites: “mangakoma01.net,”
11 “mangarawjp.asia,” “mangaraw.onl,” “mangarawjp.onl,” “spoilerplus.net,”
12 “rawkuma.com,” “truyenqqvn.com,” and “mangaspoiler.net.” Nakajima Decl. ¶¶ 5-9.

13 The material produced by Cloudflare shows that the anonymous operators of those
14 websites (the “Anonymous Individuals”) used the following email accounts that were
15 associated with the pirate websites: (1) “anh15948753@gmail.com”; (2)
16 “o0h3h3h30o@gmail.com”; (3) “fak01@googlegroups.com”; (4)
17 “linjingan053@gmail.com”; (5) “vjbayu01@gmail.com”; (6) “qiqivn@gmail.com” and
18 (7) “readwebtoonsdotcom@gmail.com”. Nakajima Decl. ¶¶ 10-12, 14, 16-21 and Exs. 4-
19 6, 8, 10-14 thereto. The material also shows that Anonymous Individuals made PayPal
20 payments to Cloudflare, using the following account numbers: “9938322”; “63540341”;
21 “10116014”; and “1392455”. Nakajima Decl. ¶¶ 12, 14, 16, 18, 20 & 21 and Exs. 6, 8, 10,
22 12 & 14 thereto. The material also shows that Anonymous Individuals made VISA credit
23 card payments to Cloudflare, using accounts ending with the following four digits: 9228,
24 expiring in 10/2027; 7614, expiring in 1/2022; 4066, expiring in 11/2022; 8748, expiring
25 in 2/2028. Nakajima Decl. ¶¶ 12, 19, 20 & 21 and Exs. 6, 13 & 14 thereto. Further, the
26 material produced by Cloudflare shows that the Anonymous Individuals used the had
27 Google AdSense accounts associated with the pirate websites under the following

28 *Ex Parte* Application for an Order Pursuant to 28 U.S.C. § 1782

1 AdSense account identifiers: “ca-pub-6920892773897594”; “ca-pub-
2 2399206419443779”; and “ca-pub-9778931209315986”. Nakajima Decl. ¶¶ 11, 13, 15 &
3 21 and Exs. 5, 7 & 9 thereto.

4 Applicant intends to file civil lawsuits in Japan against the Anonymous Individuals
5 seeking damages for copyright infringement pursuant to Article 709 of the Civil Code of
6 Japan, injunctive relief pursuant to Article 112(1) of the Copyright Act of Japan, and
7 damages and injunctive relief pursuant to Articles 3(1) and 4 of the Unfair Competition
8 Prevention Act of Japan. Nakajima Decl. ¶ 25.

9 Applicant will be able to make out a prima facie civil case against each of the
10 Anonymous Individuals because their respective conduct violated Article 709 of the Civil
11 Code, and therefore, each civil lawsuit that will be filed upon discovering the true
12 identities of the Anonymous Individuals will withstand a motion to dismiss in Japan.
13 Nakajima Decl. ¶¶ 30-31. Applicant therefore seeks Court authorization to conduct limited
14 discovery by serving subpoenas upon Google, VISA, and PayPal, all of which are located
15 in this district, to discover personal identifying information (“PII”) that can be used to
16 identify the true identities of the Anonymous Individuals. Nakajima Decl. ¶¶ 32-33.

17 **II. EX PARTE CONSIDERATION OF SECTION 1782 APPLICATION IS PROPER**

18 Applications made under 28 U.S.C. § 1782 are typically considered on an *ex parte*
19 basis, because “parties will be given adequate notice of any discovery taken pursuant to
20 the request and will then have the opportunity to move to quash the discovery or to
21 participate in it.” *IPCom GmbH & Co, KG v. Apple, Inc.*, 61 F. Supp. 3d 919, 922 (N.D.
22 Cal. 2014). Consequently, orders granting Section 1782 applications typically only
23 provide that discovery is “authorized,” and thus the opposing party may still raise
24 objections and exercise its due process rights by challenging the discovery after it is issued
25 via a motion to quash, which mitigates concerns regarding any unfairness of granting the
26 application *ex parte*. *In re Ex Parte Application Varian Med. Sys. Int’l AG*, No. 16-mc-
27 80048-MEJ, 2016 WL 1161568, at *2 (N.D. Cal. Mar. 24, 2016).

28 *Ex Parte Application for an Order Pursuant to 28 U.S.C. § 1782*

III. LEGAL STANDARD

1
2 Section 1782 permits authorization of discovery where three requirements are
3 satisfied: (1) the person from whom the discovery is sought “resides or is found” in the
4 district of the court where the application is made; (2) the discovery is “for use in a
5 proceeding in a foreign or international tribunal”; and (3) the application is made by a
6 foreign or international tribunal or “any interested person.” *Khrapunov v. Prosyankin*, 931
7 F.3d 922, 925 (9th Cir. 2019); 28 U.S.C. § 1782(a).

8 The Supreme Court in *Intel* identified four discretionary factors to be considered
9 by a court when exercising its discretion to authorize discovery pursuant to Section 1782:
10 (1) whether the person from whom discovery is sought is a participant in the foreign
11 proceeding; (2) the nature of the foreign tribunal, the character of the proceedings
12 underway abroad, and the receptivity of the foreign government or the court or agency
13 abroad to U.S. federal-court judicial assistance; (3) whether the request conceals an
14 attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign
15 country or the United States; and (4) whether the request is unduly intrusive or
16 burdensome. *In re Premises Located at 840 140th Ave. NE, Bellevue, Wash.*, 634 F.3d 557,
17 563 (9th Cir. 2011) (cleaned up) (citing *Intel*, 542 U.S. at 264-65).

18 The party seeking discovery need not establish that the information sought would
19 be discoverable under the governing law in the foreign proceeding or that United States
20 law would allow discovery in an analogous proceeding here. See *Intel*, 542 U.S. at 247,
21 261-63. “Section 1782 is a provision for assistance to tribunals abroad. It does not direct
22 United States courts to engage in comparative analysis to determine whether analogous
23 proceedings exist” in the United States. *Id.* at 244. Further, production of documents or
24 testimony may be ordered for use in a foreign legal proceeding under Section 1782 as long
25 as the disclosure would not violate a legal privilege. *Id.* at 249.

26 A district court’s discretion is guided by the twin aims of Section 1782: providing
27 efficient assistance to participants in international litigation and encouraging foreign

1 countries by example to provide similar assistance to U.S. courts. *In re Ex Parte*
 2 *Application of Med. Inc. Ass'n Smile Create*, No. 19-mc-80230-VKD, 2019 WL 4933582,
 3 at *2 (N.D. Cal. Oct. 7, 2019) (citing *Schmitz v. Bernstein Liebhard & Lifshitz LLP*, 376
 4 F.3d 79, 84 (2d Cir. 2004)).

5 **IV. ARGUMENT**

6 **1. This Application Satisfies the Three Requirements of Section 1782**

7 **A. Google, Paypal and Visa each “resides or is found” in this district**

8 The first requirement is met. Google “resides or is found” in this district as its
 9 principal office is in Mountain View, California, in this district. Nakajima Decl. ¶ 22 &
 10 Ex. 15 thereto. Paypal, Inc. has its principal office in San Jose, California, in this district.
 11 Nakajima Decl. ¶ 23, and Ex. 16 thereto. Visa Inc. has its principal office in Foster City,
 12 California, in this district. Nakajima Decl. ¶ 24, and Ex. 17 thereto. *See In re Todo*, No.
 13 5:22-MC-80248-EJD, 2022 WL 4775893, at *2 (N.D. Cal. Sept. 30, 2022) (“*In re Super*
 14 *Vitaminas, S.A.*, 2017 WL 5571037, at *2 (N.D. Cal. Nov. 20, 2017) (finding that an
 15 office within the district satisfies the requirement); *In re TPK Touch Sols. (Xiamen) Inc.*,
 16 2016 WL 6804600, at *2 (N.D. Cal. Nov. 17, 2016) (finding subpoenaed party was
 17 “found” within the district because it maintained an in-district office). Courts have also
 18 concluded that companies are found in a district where ‘they conduct systematic and
 19 continuous local activities in this district.’ *In re Qualcomm Inc.*, 162 F. Supp. 3d 1029,
 20 1036–38 (N.D. Cal. 2016)”).

21 **B. The civil action in Japan is within reasonable contemplation**

22 To meet the second requirement, a formal proceeding in the foreign jurisdiction
 23 need not be currently pending, or even imminent. *Intel*, 542 U.S. at 259. All that is
 24 required by the statute is that a “future proceeding is ‘within reasonable contemplation.’”
 25 *Id.* (holding that discovery was proper under Section 1782 even though the applicant’s
 26 complaint was still only in the investigative stage).

27 The second requirement is met, because the discovery sought is for purposes of
 28 *Ex Parte* Application for an Order Pursuant to 28 U.S.C. § 1782

1 civil lawsuits to be filed in Japan. Nakajima Decl. ¶¶ 25, 32-33. Civil lawsuits in Japan are
2 “within reasonable contemplation” because Applicant intends to file the civil lawsuits
3 once the true identities of the Anonymous Individuals are ascertained. *Id.*

4 C. The Applicant, as a putative plaintiff, is an interested person

5 The third and final requirement is met, because Applicant, as putative plaintiff, is
6 an interested person. *Id.*; see *Intel*, 542 U.S. at 256 (litigants are most common example of
7 interested person).

8 **2. The Supreme Court’s *Intel* Factors Strongly Favor Granting the**
9 **Application**

10 The four discretionary Intel factors weigh heavily in favor granting Applicant’s
11 request.

12 A. Google, PayPal, and Visa, from whom discovery is sought, are not
13 parties in the foreign proceedings

14 The first *Intel* factor is whether “the person from whom discovery is sought is a
15 participant in the foreign proceeding.” *Intel*, 542 U.S. at 264. Under this factor, “the key
16 issue is whether the material is obtainable through the foreign proceeding.” *In re Ex Parte*
17 *Application Varian Med. Sys. Int’l AG*, No. 16-mc-80048-MEJ, 2016 WL 1161568, at *3
18 (N.D. Cal. Mar. 24, 2016). This is so, because “nonparticipants in the foreign proceeding
19 may be outside the foreign tribunal’s jurisdictional reach; hence, their evidence, available
20 in the United States, may be unobtainable absent § 1782(a) aid.” *Intel*, 542 U.S. at 264.

21 Google, PayPal, and VISA will be a nonparticipants in the civil actions in Japan.
22 Nakajima Decl. ¶ 34. Furthermore, they are each located in this district. *Id.* ¶¶ 22-24 & Ex.
23 15-17 thereto. For the foregoing reasons, they are outside Japan’s jurisdictional reach, and
24 hence, evidence available in the United States from them is unobtainable by Applicant
25 absent Section 1782(a) aid. *Id.* ¶ 34; see *Intel*, 542 U.S. at 264. Therefore, this first factor
26 weighs in favor of authorizing discovery.

27 B. Japanese courts are receptive to U.S. federal court judicial assistance

28 *Ex Parte* Application for an Order Pursuant to 28 U.S.C. § 1782

1 The second *Intel* factor requires the Court to consider “the nature of the foreign
2 tribunal, the character of the proceedings underway abroad, and the receptivity of the
3 foreign government or the court or agency abroad to U.S. federal-court judicial
4 assistance.” *Intel*, 542 U.S. at 264. “This factor focuses on whether the foreign tribunal is
5 willing to consider the information sought.” *In re Ex Parte Application Varian Med. Sys.*
6 *Int’l AG*, 2016 WL 1161568, at *4. Under this factor, “courts look for authoritative proof
7 that a foreign tribunal would reject evidence obtained with the aid of § 1782.” *In re*
8 *Application of Joint Stock Co. Raiffeisenbank*, No. 16-mc-80203-MEJ, 2016 WL
9 6474224, at *5 (N.D. Cal. Nov. 2, 2016). In the absence of authoritative proof that a
10 foreign tribunal would reject evidence obtained with the aid of Section 1782, courts tend
11 to err on the side of permitting discovery. *See Palantir Techs., Inc. v. Abramowitz*, 415 F.
12 Supp. 3d 907, 915 (N.D. Cal. 2019) (citation omitted). In the absence of evidence that a
13 foreign court would object to the discovery of the information sought in the subpoena, or
14 that a foreign court objects more generally to the judicial assistance of U.S. federal courts,
15 this factor weighs in favor of authorizing discovery. *See, e.g., In re Med. Corp. H&S*, No.
16 19-mc-80058-VKD, 2019 WL 1230440, at *3 (N.D. Cal. Mar. 15, 2019).

17 There are no known restrictions imposed by or any policies under the laws of
18 Japan limiting U.S. federal court judicial assistance, and courts of Japan are receptive to
19 assistance in discovery by U.S. federal courts, including for discovery of PII of individuals
20 acting anonymously online. Nakajima Decl. ¶¶ 35-36. Furthermore, this Court in the past
21 has granted Section 1782 discovery for use in proceedings in Japan. *See, e.g., In re Med.*
22 *Corp. H&S*, 2019 WL 1230440; *In re Med. Corp. Seishinkai*, No. 21-mc-80160-SVK,
23 2021 WL 3514072 (N.D. Cal. Aug. 10, 2021).

24 Because there is evidence showing that courts of Japan are receptive to U.S.
25 federal court judicial assistance, and there is nothing to show that courts of Japan would
26 object to discovery of the information sought by this Application, this factor weighs in
27 favor of authorizing discovery.

28 *Ex Parte Application for an Order Pursuant to 28 U.S.C. § 1782*

1 C. This Is Not an Attempt to Circumvent Foreign Proof-Gathering
2 Restrictions

3 The third *Intel* factor is whether the request “conceals an attempt to circumvent
4 foreign proof-gathering restrictions or other policies of a foreign country or the United
5 States.” *Intel*, 542 U.S. at 264-65. Courts have found that this factor weighs in favor of
6 discovery where there is “nothing to suggest that [the applicant] is attempting to
7 circumvent foreign proof-gathering restrictions.” *In re Google Inc.*, No. 14-mc-80333-
8 DMR, 2014 WL 7146994, at *3 (N.D. Cal. Dec. 15, 2014); *see also In re Eurasian*
9 *Natural Resources Corp.*, No. 18-mc-80041-LB, 2018 WL 1557167, at *3 (N.D. Cal. Mar.
10 30, 2018) (third *Intel* factor weighs in favor of discovery where there is “no evidence” of
11 an attempt to circumvent foreign proof gathering restrictions or policies). Applicant is not
12 attempting to circumvent any foreign proof-gathering restrictions or other policies of
13 Japan or the United States. Nakajima Decl. ¶ 37. Nothing suggests that Applicant is
14 attempting to circumvent foreign proof-gathering restrictions or applicable polices, so this
15 factor weighs in favor of authorizing discovery.

16 D. The discovery requested is narrowly tailored, limited in scope, and
17 relevant

18 The fourth *Intel* factor is whether “the discovery requested is unduly intrusive or
19 burdensome.” *Intel*, 542 U.S. at 265. Requests are unduly intrusive and burdensome where
20 they are not narrowly tailored, request confidential information and appear to be a broad
21 “fishing expedition” for irrelevant information. *In re Ex Parte Applicate of Qualcomm*
22 *Inc.*, 162 F. Supp. 3d 1029, 1043 (N.D. Cal. 2016). The discovery sought here is narrowly
23 tailored to seek only sufficient information to identify the Anonymous Individuals, and is
24 not unduly intrusive or burdensome, because Applicant seek discovery of only PII such as
25 names, addresses, telephone numbers, and e-mail addresses, or information that will lead
26 to the discovery of PII such as access logs for limited periods of time, which information
27 is stored by Google, VISA and PayPal in the ordinary course of their business. Nakajima
28 *Ex Parte Application for an Order Pursuant to 28 U.S.C. § 1782*

1 Decl. ¶¶ 38-40; see *In re Frontier Co., Ltd.*, No. 19-mc-80184-LB, 2019 WL 3345348, at
2 *5 (N.D. Cal. July 25, 2019) (granting a Section 1782 request to issue a subpoena for the
3 name, address, email address, telephone number, and name and address on credit cards);
4 *In re Med. Corp. Seishinkai*, 2021 WL 3514072, at *4-5 (authorizing similar discovery).

5 As for the access logs, discovery of the IP address and the corresponding port
6 number and date and time that the IP address was used (commonly known as a timestamp)
7 is reasonable and necessary because IP addresses and port numbers are assigned by an
8 internet service provider (the “ISP”) when a user accesses the internet. Nakajima Decl. ¶
9 41. Because of this, different people may be using the same IP address at different points-
10 in-time. *Id.* Therefore, without both the IP address and the corresponding timestamp, a
11 Japanese court will be unable to order an ISP to disclose PII of the tortfeasor, because it
12 will be unclear which of the users of the subject IP address used the IP address at a
13 specific point-in-time. *Id.* The IP address, port number and timestamp are all necessary for
14 a Japanese court to order an ISP to disclose PII sufficient to identify the Anonymous
15 Individuals, and for the ISP to pinpoint the relevant person using that information. *Id.*¹

16 For the foregoing reasons, this factor also weighs in favor of authorizing
17 discovery.

18 V. CONCLUSION

19 Applicant has met each of the requirements of Section 1782, and all of the
20 discretionary *Intel* factors weigh in favor of authorizing discovery. In light of the twin
21 aims of Section 1782 to provide efficient assistance to foreign litigants and to encourage
22 foreign countries by example, this Court should exercise its discretion to authorize limited
23 discovery from Google, Microsoft and PayPal, so that Applicant can identify the
24

25 ¹ Additionally, the subpoenas comply with the Stored Communications Act, 18 U.S.C. §
26 2701 et seq., because they do not seek the contents of communications from the accounts
27 See, e.g., *Optiver Australia Pty. Ltd. v. Tibra Trading Pty. Ltd.*, No. C 12-80242, 2013
28 WL 256771 (N.D. Cal. Jan. 23, 2013) (discussing prohibitions of the Stored
Communications Act).

1 Anonymous Individuals and file civil lawsuits in Japan.

2

3 Dated: October 23, 2024

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