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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 *In re Ex Parte* Application of) CASE NO. 5:24-mc-80072-PCP
15 Min-ji Kim, Phạm Ngọc Hân, Ji-hye) **AMENDED EX PARTE**
16 Mo, Hae-rin Kang, Hye-in Lee,) **APPLICATION FOR AN ORDER**
17 Applicants.) **PURSUANT TO 28 U.S.C. § 1782**
18) **AUTHORIZING DISCOVERY FOR**
19) **USE IN A FOREIGN**
20) **PROCEEDING; AND**
21) **MEMORANDUM OF POINTS AND**
22) **AUTHORITIES**

23 **AMENDED EX PARTE APPLICATION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782**

24 Pursuant to 28 U.S.C. Section 1782, Applicants Min-ji Kim, Phạm Ngọc Hân, Ji-hye Mo,
25 Hae-rin Kang, and Hye-in Lee (“**Applicants**”) hereby move *ex parte* for an order authorizing
26 limited discovery for use in a criminal matter in the Republic of Korea (“**Application**”). As
27 further stated in the proposed subpoena, the Applicants seek limited discovery from Google LLC
28 (“**Google**”), which is an entity located in this judicial district.

1 US district courts, including this judicial district, have commonly decided Section 1782
2 applications on an *ex parte* basis because “parties will be given adequate notice of any discovery
3 taken pursuant to the request and will then have the opportunity to move to quash the discovery
4 or to participate in it.” *IPCom GmbH & Co, KG v. Apple, Inc.*, 61 F.Supp.3d 919, 922 (N.D. Cal.
5 2014) (citation omitted); *see also In re Letters Rogatory from Tokyo District, Tokyo, Japan*, 539
6 F.2d 1216, 1219 (9th Cir. 1976) (In discussing Section 1782, the court noted that “Letters
7 Rogatory are customarily received and appropriate action taken with respect thereto *ex parte*”);
8 Frischknecht and Lindsey, *Evidence gathering in aid of foreign proceedings in the US and*
9 *England*, International Bar Association, August 4, 2021 at [https://www.ibanet.org/evidence-](https://www.ibanet.org/evidence-gathered-foreign-proceedings-US-England)
10 [gathered-foreign-proceedings-US-England](https://www.ibanet.org/evidence-gathered-foreign-proceedings-US-England) (last visited March 10, 2024). For the reasons set
11 forth herein, the Applicants respectfully request this Court decide this Section 1782 application
12 on an *ex parte* basis.

13 This Section 1782 request is supported by the accompanying memorandum of points and
14 authorities, and the Declaration of Mun Hui Kim, all of which are filed concurrently herewith.
15 The Application is also supported by the Declaration of Donghoon Shin that was filed on March
16 27, 2024. *See* ECF No. 1-2.

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I. INTRODUCTION

19 The Applicants are members of a female K-POP group, who have come under attack by
20 an anonymous individual (“**YouTuber**”) posting false and defamatory videos on YouTube. To
21 stop this anonymous YouTuber, the Applicants have brought a criminal complaint with the law
22 enforcement authorities in the Republic of Korea (“**Korea**”). Unfortunately, without the
23 YouTuber’s personally identifiable information (“**PII**”) the criminal case cannot be fully
24 prosecuted.

25 On or about March 20, 2024, the Applicants’ counsel was unsuccessful in his attempt to
26 informally request information from Google, the company that operates YouTube. As a result,
27 the Applicants now need the assistance of this Court.

1 As set forth below, the Applicants satisfy all the statutory requirements under Section
2 1782, and the discretionary factors weigh in favor of the Court exercising its discretion to grant
3 this Application. Moreover, this Application does not prevent Google from objecting or moving
4 to quash the targeted requests made in the proposed subpoena. *See Exhibit A.*

5 II. FACTUAL BACKGROUND

6 A. Criminal Matter in the Republic of Korea

7 ADOR Co., Ltd. (“ADOR”) is a record label and entertainment agency that, among other
8 things, trains and manages K-POP performers from its principal place of business in Seoul,
9 Korea. Shin Decl. ¶ 2. In November 2021, ADOR was established as an independent label from
10 its parent company HYBE Co., Ltd. under the laws of Korea. In 2022, ADOR formed a Korean
11 female K-POP group called NewJeans, which consists of the Applicants as its members. ADOR,
12 as NewJeans’ record label and entertainment agency, is authorized to take steps to protect the
13 reputation of its artists, including the Applicants. *Id.* ¶¶ 2-3.

14 The YouTuber, using the YouTube channel named 7th Grade in Middle School
15 (“중학교 7 학년” in the original Korean language) (“Channel”) located at
16 <https://www.youtube.com/@Middle7>, made false and defamatory statements about the members
17 of NewJeans in as many as 33 defamatory videos that were uploaded on YouTube (“Videos”).
18 *Id.* ¶ 5, Ex. 1. In one video, the YouTuber made a false statement as well as derogatory remarks
19 based on nationality and race by claiming Min-ji Kim of NewJeans is the “eldest daughter of a
20 Vietnamese farmer” (“베트남 농부 첫째 딸” in the original Korean language).

21 The YouTuber has engaged in name-calling or other mocking behavior against the
22 Applicants, all of which constitute defamation and/or crime of insult under the laws of the
23 Republic of Korea. *Id.* ¶¶ 6-7; Kim Decl. ¶¶ 5-9. As of March 13, 2024, the Videos were viewed
24 more than 13,800,000 times. Shin Decl. ¶ 8. The YouTuber, who has approximately 12,700
25 subscribers, will likely continue to upload defamatory videos, which will continue to inflict
26 significant reputational damage on the Applicants. *Id.* ¶ 8, Ex. 1.

1 On March 19, 2024, the Applicants filed a criminal complaint with the Seoul Yongsan
2 Police Station claiming defamation and insult against the YouTuber under Korean law
3 (“**Criminal Matter**”). Kim Decl. ¶ 6. Specifically, the Applicants assert that the YouTuber
4 committed defamation pursuant to Article 70(2) of the Act on Promotion of Information and
5 Communications Network Utilization and Information Protection, and a crime of insult pursuant
6 to Article 311 of the Korean Criminal Act. Kim Decl. ¶¶ 8-9.

7 **B. Limited Discovery Sought From Google LLC**

8 Google is an American multinational company with its principal place of business located
9 at 1600 Amphitheatre Parkway, Mountain View, California 94043. Kim Decl. ¶ 12, Ex. 1.
10 Google owns and operates YouTube, a free video sharing and social media platform where users
11 upload and watch videos and share comments on message boards.¹ To upload videos on
12 YouTube, users need a Google account to create and log into YouTube.² In addition, Google
13 accounts provide access to a number of services, like Google AdSense, which links to the
14 YouTube Partner Program so users can make money on their YouTube Channels.³

15 Without the true identity of the YouTuber, the Applicants will be unable to fully
16 prosecute the Criminal Matter. Shin Decl. ¶ 10; Kim Decl. ¶ 10. The subpoena is narrowly
17 tailored to seek documents from Google that will reveal the YouTuber’s identity through
18 his/her/its PII in the subject Google accounts. Kim Decl. ¶ 19.

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22 ¹ See Fed. R. Evid. 201(b) (the information provided about Google and YouTube are generally
23 known within the court’s jurisdiction, or can be accurately and readily verified from the
24 sources noted below whose accuracy cannot be reasonably questioned). *WebWise.ie*,
Explained: What is YouTube?, <https://www.webwise.ie/parents/what-is-youtube/> (last visited
25 March 27, 2024); YouTube, Terms of Service (January 5, 2022),
<https://www.youtube.com/static?template=terms>.

26 ² Google LLC, YouTube Help, Create a YouTube channel,
<https://support.google.com/youtube/answer/1646861?hl=en> (last visited March 27, 2024).

27 ³ Google LLC, <https://about.google/products/> (last visited March 27, 2024) (list of Google
28 products); Google LLC, YouTube Help, YouTube Partner Program overview & eligibility,
https://support.google.com/youtube/answer/72851?hl=en&ref_topic=9153642 (last visited
March 27, 2024).

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III. JURISDICTION AND VENUE

This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this Application is made under a federal statute 28 U.S.C. § 1782(a). Venue in this District is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1782(a) because the party from whom discovery is sought “resides or is found” in this District, as further discussed below.

IV. LEGAL STANDARD

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

In *Intel Corp. v. Advanced Micro Devices, Inc.*, the Supreme Court identified four factors that district courts should consider when exercising their discretion to grant Section 1782 discovery applications:

- [1] “whether the person from whom discovery is sought is a participant in the foreign proceeding”; [2] “the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance”; [3] whether the request “conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States”; and [4] whether the request is “unduly intrusive or burdensome.”

In re Premises Located at 840 140th Ave. NE, Bellevue, Wash., 634 F.3d 557, 563 (9th Cir. 2011) (quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004)).

In exercising this discretion, district courts consider the twin aims of the statute: “providing efficient assistance to participants in international litigation, and encouraging foreign countries by example to provide similar assistance to U.S. courts.” *Intel*, 542 U.S. at 252.

V. ARGUMENT

A. This Application Meets All of the Statutory Requirements of Section 1782

As set forth herein, this Application meets the requirements of Section 1782.

1 First, Google “resides” or “is found” within the meaning of Section 1782, because its
2 principal place of business is Mountain View, California, which is located in this judicial district.
3 Kim Decl. ¶ 12, Ex. 1.

4 Second, the Applicants seek discovery to aid in the prosecution of the Criminal Matter in
5 Korea. Kim Decl. ¶ 10. A proceeding in the foreign jurisdiction need only be “within reasonable
6 contemplation”, rather than be “pending” or “imminent”, to satisfy this second statutory
7 requirement. *Intel*, 542 U.S. at 259. Here, the Applicants have brought a complaint with the law
8 enforcement authorities in Korea. Kim Decl. ¶ 6.

9 Third, the Applicants brought the Criminal Matter because it relates to crimes committed
10 against them by the YouTuber. Kim Decl. ¶¶ 6-9. Thus, the Applicants satisfy the third statutory
11 requirement for being “interested person[s]”. *Intel*, 542 U.S. at 256-57 (“No doubt litigants are
12 included among, and may be the most common example of, the ‘interested person[s]’ who may
13 invoke [Section] 1782”).

14 **B. Each of the *Intel* Discretionary Factors Weigh in Favor of Granting this Application**

15 The discretionary factors identified by the Supreme Court in *Intel* weigh heavily in favor
16 of this Court granting this Application.

17 **1. Google is a nonparticipant in the Korean Criminal Matter**

18 The first factor is whether “the person from whom discovery is sought is a participant in
19 the foreign proceeding.” *Intel*, 542 U.S. at 264. The Supreme Court recognized that the district
20 courts’ assistance is needed the most when the evidence is sought from a non-participant in a
21 foreign proceeding. *Id.* “[N]onparticipants in the foreign proceeding may be outside the foreign
22 tribunal’s jurisdictional reach; hence, their evidence, available in the United States, may be
23 unobtainable absent § 1782(a) aid.” *Id.*

24 Google is not named in the Korean Criminal Matter. Kim Decl. ¶ 12. Since Google and
25 the requested documents are located in this District, which is outside the Korean courts
26 jurisdictional reach over nonparticipants, evidence available from Google through a United
27 States federal court proceeding is unobtainable by the Applicants in Korea absent Section

1 1782(a). *Id.* ¶ 12; Exs. 1, 2; *see Intel*, 542 U.S. at 264. Accordingly, this first factor weighs
2 heavily in favor of granting this Application.

3 **2. Korean Tribunals are receptive to U.S. judicial assistance**

4 Next, the Supreme Court requires this Court to consider “the nature of the foreign
5 tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign
6 government or the court or agency abroad to U.S. federal-court judicial assistance.” *Intel*, 542
7 U.S. at 264. “This factor focuses on whether the foreign tribunal is willing to consider the
8 information sought.” *In re Ex Parte Application of Varian Med. Sys. Int’l AG*, 2016 WL
9 1161568, at *4 (N.D. Cal. March 24, 2016). There is a long history of Korean tribunals
10 requesting and receiving U.S. judicial assistance under Section 1782. *See In re Request for*
11 *Judicial Assistance from Seoul Dist. Criminal Court, Seoul, Korea*, 428 F.Supp. 109, 114 (N.D.
12 Cal. 1977) (granted Seoul District Criminal Court’s request for bank records); *In re Request for*
13 *Int’l Judicial Assistance from the Nat’l Court Admin. of the Republic of Korea*, No. C15-80069
14 MISC LB, 2015 WL 1064790, at *1-2 (N.D. Cal. Mar. 11, 2015) (granted Korean National Court
15 Administration’s request for information and documents from Google, Inc.); *In re Request for*
16 *Judicial Assistance from Seoul Central District Court in Seoul, Republic of South Korea*, Case
17 No. 23-mc-800016-BLF, 2023 WL 2394545, *1 (N.D. Cal. Mar. 7, 2023) (granted Seoul Central
18 District Court’s request seeking information to identify four anonymous Instagram users who
19 defamed or insulted a plaintiff in a Korean civil proceeding).

20 Additionally, in “the absence of authoritative proof that a foreign tribunal would reject
21 evidence obtained with the aid of Section 1782”, courts tend to “err on the side of permitting
22 discovery.” *See In re Ex Parte Application of Varian Med. Sys. Int’l AG*, 2016 WL 1161568, at
23 *4; *see also Palantir Techs., Inc. v. Abramowitz*, 415 F.Supp.3d 907, 915 (N.D. Cal. 2019)
24 (citation omitted). In other words, discovery is favored unless there is clear evidence that the
25 foreign tribunal would reject the evidence sought.

26 Here, there are no known restrictions imposed by, or any policies under, Korean law that
27 would limit U.S. federal court judicial assistance, and Korean courts are receptive to assistance

1 in discovery by United States federal courts, including for discovery of PII of individuals posting
2 anonymously online. Kim Decl. ¶¶ 13-15. As stated above, Korean courts have a history of
3 seeking judicial assistance from federal courts and courts in this district have in the past granted
4 Section 1782 discovery for use in Korean court proceedings. For the foregoing reasons, this
5 second factor weighs heavily in favor of granting this Application.

6 **3. The Applicants are not seeking to circumvent any Korean court procedures**

7 The third factor directs the court to consider “whether the [Section] 1782(a) request
8 conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a
9 foreign country or the United States.” *Intel*, 542 U.S. at 265. As a court in this district recently
10 stated, “[t]his factor will weigh in favor of discovery if there is ‘nothing to suggest that [the
11 applicant] is attempting to circumvent foreign proof gathering restrictions.’” *In re Starship*
12 *Entertainment Co., Ltd.*, Case No. 23-mc-80147-BLF (N.D. Cal. May. 24, 2023) (quoting *In re*
13 *Application of Google Inc.*, No. 14-mc-80333-DMR, 2014 WL 7146994, at *3 (N.D. Cal. Dec.
14 15, 2014)).

15 The Applicants are not attempting to circumvent any “foreign proof-gathering
16 restrictions” or “other policies” of Korea or the United States. Kim Decl. ¶ 15. In fact, the
17 opposite is true. The Applicants’ Korean counsel anticipates that evidence will be admissible in
18 the Korean proceeding. *Id.* Absent any evidence to contradict this Application,⁴ this third factor
19 also weighs in favor of granting this Application.

20 **4. This Application is not unduly intrusive or burdensome**

21 The last factor is whether the discovery requested is “unduly intrusive or burdensome.”
22 *Intel*, 542 U.S. at 265. The Supreme Court noted that requests that are too burdensome *in part*
23 may be “trimmed” so that the requests can be partially authorized. *Id.*

24 While requests that seek confidential information or are broad “fishing expedition” for
25 irrelevant information may be unduly intrusive or burdensome, *In re Ex Parte Application of*
26

27 ⁴ See Section V.B.2 above regarding past cases where district courts granted Korean tribunals’
28 request for discovery.

1 *Qualcomm Inc.*, 162 F.Supp.3d 1029, 1043 (N.D. Cal. 2016), the Applicants requests are narrow
2 in scope and number. The Applicants proposed subpoena consists of three document requests
3 that seek information to identify the YouTuber, such as such as names, addresses, telephone
4 numbers, and e-mail addresses, or information that will lead to the discovery of PII, which is or
5 should be stored by Google in the regular course of business. *See* Ex. A; Kim Decl. ¶¶ 16-17; *see*
6 *In re Ex Parte Application of Frontier Co., Ltd.*, Case No. 19-mc-80184-LB, 2019 WL 3345348,
7 at *5 (N.D. Cal. July 25, 2019) (name, address, email, phone number, and name on credit cards,
8 etc.); *In re Med. Corp. Seishinkai*, Case No. 21-mc-80160-SVK, 2021 WL 3514072, at *4-5
9 (N.D. Cal. Aug. 10, 2021) (granting discovery from Google under Section 1782). Additionally,
10 for reasons set forth in the declaration of MH Kim, the proposed subpoena does not seek any
11 communications associated with the YouTuber. 18 U.S.C. § 2701 et seq.; *see, e.g., Optiver*
12 *Australia Pty. Ltd. v. Tibra Trading Pty. Ltd.*, No. C 12-80242 EJD (PSG), 2013 WL 256771
13 (N.D. Cal. Jan. 23, 2013) (discussing prohibitions under the Stored Communications Act).

14 As noted in Section II.A above, the YouTuber is not using his/her/its real name for the
15 Channel. Since there is a high probability that this person is not providing a true name and
16 address to Google, an access log may be the only way to clearly identify the YouTuber. Kim
17 Decl. ¶ 17. Without such information, it is possible the names and addresses Google has on file
18 in connection with the YouTuber are fictitious or otherwise not helpful for the Applicants in the
19 Korean Criminal Matter. If that were to occur, the access log is the only information available to
20 assist the Applicants. *See, e.g., In re Ex Parte Application of Medical Corporation H&S*, Case
21 No. 19-mc-80058-VKD, 2019 WL 3945003, at *1 (N.D. Cal. Aug. 21, 2019) (granting “no more
22 than six months of access log information” from Google); *Med. Corp. H&S v. Unknown*
23 *Defendant*, Case No. 19-mc-80107-SVK (N.D. Cal. May. 30, 2019) (authorizing service of a
24 subpoena on Google).

25 Accordingly, this last factor weighs in favor of the Applicants because their requests for
26 documents are narrow, are not intrusive or burdensome, and Google has a right to object, seek a
27

1 protective order or otherwise seek to narrow the requests.⁵

2 **VI. CONCLUSION**

3 For the reasons stated above, the Applicants respectfully request this Court exercise its
4 discretion under Section 1782 to grant this Application and permit them to issue the proposed
5 subpoena to Google.

6 Dated: April 3, 2024

7 STREAM KIM HICKS WRAGE & ALFARO, PC.

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9 _____
10 Eugene Kim

11 *Attorneys for Applicants*
12 *Min-ji Kim, et al.*

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25 _____
26 ⁵ Google at <https://transparencyreport.google.com/user-data/overview?hl=en> (“We carefully
27 review each request to make sure it satisfies applicable laws. If a request asks for too much
28 information, we try to narrow it, and in some cases we object to producing any information at all.
You can see the full policy at . . . ”)

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record, certifies that this brief contains 2,975 words, which complies with the word limit of L.R. 11-6.1.

Dated: April 3, 2024 STREAM KIM HICKS WRAGE & ALFARO, PC.



Eugene Kim
Attorneys for Min-ji Kim, et al.

Exhibit A

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Exhibit A

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

I. Definitions

- A. The term “Document” or “Documents” shall mean a writing, as defined in Rule 34(a) of the Federal Rules of Civil Procedure and related Rule 1001 of the Federal Rules of Evidence, and includes the original or a copy of drawings, graphs, charts, photographs, sound recordings, images, other data compilations and electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combination of them.

- B. The term “Google Account” means the Google account(s) and/or YouTube account registered or otherwise linked to the person or persons who created, uses and/or otherwise logs in to the YouTube channel with the name “7th Grade in Middle School” (“중학교 7 학년” in the original Korean language) which is accessible from the URL <https://www.youtube.com/@Middle7>.

- C. The term “Access Logs” means the dates, times, Internet Protocol addresses, port numbers and any other related information that is kept by Google when users login or upload videos to his/her/its Google Account (as defined above).

II. Requests for Production

- 1. Any and all Documents that identify the person or persons who created the Google Account, including each and every registered, recovery and/or otherwise associated:
 - a. Name(s),
 - b. Gender,
 - c. Date of Birth,
 - d. Address(es),
 - e. Email address(es), and/or
 - f. Telephone numbers.

2. Any and all Documents that identify the person or persons with credit cards and/or other payment methods registered with the Google Account, including:
 - a. Name(s),
 - b. Gender,
 - c. Date of Birth,
 - d. Address(es),
 - e. Email address(es), and/or
 - f. Telephone numbers.

Please note this request does not seek the actual credit card numbers, bank account numbers or passwords to such payment methods.

3. Any and all Documents that identify the login history, including but not limited to the Access Logs associated with the Google Account from October 1, 2023 up to and including the date of your production of documents or tangible things.

Please note that Applicants' Counsel is willing to meet and confer with Google to discuss ways to narrow this request. On or about March 20, 2024, Applicants' Counsel attempted to meet and confer with Google, but did not receive a positive response.