

1 JAMES McMANIS (40958)
TYLER ATKINSON (257997)
2 McMANIS FAULKNER
a Professional Corporation
3 50 West San Fernando Street, 10th Floor
San Jose, California 95113
4 Telephone: (408) 279-8700
Facsimile: (408) 279-3244
5 Email: tatkinson@mcmanislaw.com

6 DANA ALDEN FOX (119761)
FRANK OZELLO (153989)
7 LEWIS BRISBOIS BISGAARD & SMITH, LLP
221 North Figueroa Street, Suite 1200
8 Los Angeles, CA 90012-2601
9 Phone: (213)250-1800
Fax: (213) 250-7900

10 Attorneys for Defendants,
11 UNITED STATES SWIMMING, INC.
and PACIFIC SWIMMING, INC.
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF SANTA CLARA

15 JANCY ANN TORRES THOMPSON

16 Plaintiff,

17 vs.

18 UNITED STATES SWIMMING, INC., a Ohio
corporation; PACIFIC SWIMMING, INC., a
19 California corporation; WEST VALLEY
SWIM CLUB, INC., a California corporation;
20 NORM HAVERCROFT, an individual; DOE 5,
a foreign corporation; and DOES 6-25,
21 inclusive,

22 Defendants.
23
24
25
26
27
28

Case No.: 1-10-CV-174783

**DECLARATION OF DAVID BERKOFF
IN SUPPORT OF MOTION FOR
RETURN OF DOCUMENTS PRODUCED
IN DISCOVERY**

DATE: May 31, 2013

TIME: 9:00 a.m.

DEPT: 19

JUDGE: Socrates P. Manoukian

Signature Via Facsimile

1 I, David Berkoff, declare:

2 1. I am an attorney in good standing licensed to practice in the State of Montana,
3 U.S. District Court for the District of Montana, and Ninth Circuit Court of Appeals, and have
4 practiced law for 15 years.

5 2. I am also a 2-time U.S. Olympic Swimming Team member and have been
6 involved in the sport of swimming as an athlete, swim parent, or coach for forty years.

7 3. I currently serve in the volunteer positions of Technical Vice President and
8 member of the Board of Directors of USA Swimming, Inc. I have personal knowledge of the
9 facts within and, if called as a witness, I could and would competently testify thereto.

10 4. On or about February 21, 2013, I visited a blog entitled, "Concussion Inc.",
11 known to be authored by Irvin Muchnick, and located online at: <http://concussioninc.net/>
12 ("Muchnick blog"). I did so after I was notified by an acquaintance that the Muchnick blog had
13 posted an article claiming that the Federal Bureau of Investigation ("FBI") was opening a
14 criminal investigation into USA Swimming, Inc.

15 5. As of May 21, 2013, the Muchnick blog homepage contains the following
16 announcement:

17 **CONCUSSION INC.**, which includes investigative coverage of the sexual abuse
18 scandals in USA Swimming as well as the traumatic brain injury crisis in football,
19 now features joint reporting and writing on the swimming story by TIM JOYCE.
20 He was the first reporter to write regularly about this issue. Joyce's work includes a
21 groundbreaking series of articles and on-air appearances for WBAL Radio in
22 Baltimore.

23 6. The Muchnick blog contains extensive reporting about litigation involving
24 plaintiff's counsel and USA Swimming, Inc.

25 7. When I visited the Muchnick blog somewhere between 9:00 a.m. and 10:00 a.m.
26 Mountain Time on February 21, 2013, I found that the blog contained a link to a pdf formatted
27 document of a subpoena issued by the FBI to the law firm of Corsiglia McMahon & Allard, LLP
28 ("Allard firm"). I accessed the link and read the FBI subpoena.

8. The FBI subpoena I accessed on the Muchnick blog clearly stated in bold

1 capitalized letters that the Allard firm, as the respondent, should not disseminate the subpoena or
2 tell anyone that the subpoena had been issued because it could affect a criminal investigation. A
3 true and correct copy of the subpoena I accessed on the Muchnick blog is attached as Exhibit A.

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

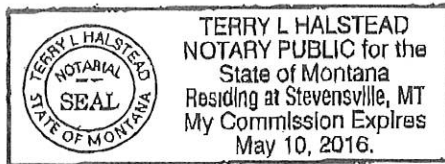
6
7 DATED this 22nd day of May, 2013.

8 David C. Berkoff

9
10 David C. Berkoff

11
12 SIGNED AND SWORN to before me this 22nd day of May, 2013, by David
13 C. Berkoff.

14 (SEAL)



22
23
24
25
26
27
28

Halstead

NOTARY PUBLIC for the State of Montana

(Type or print name)

Residing at: _____, MT

My Commission Expires: _____

EXHIBIT A

UNCLASSIFIED

FD-1035 (REV 08-31-2012)

U.S. DEPARTMENT OF JUSTICE/FEDERAL BUREAU OF INVESTIGATION
SUBPOENA

Subpoena number: 13669 When responding please reference this subpoena number.

In the matter of case number(s): 031E-SF-148261

TO: Corsiglia, McMahon, & Allard
Ms. Kim Telesco
ADDRESS: 96 North 3rd Street
Suite 620
San Jose, CA 95112
TELEPHONE:
FAX: 4082898127

GREETING:

By the service of this subpoena upon you by Marian Gimbel, who is authorized to serve it, you are hereby commanded and required to disclose to Ronald Marino, a representative of the FBI, the following information for the period 2013-02-20 to 2013-02-20 or the billing cycle including the requested time period: Customer or subscriber name, address of service, and billing address, Local and long distance telephone connection records (including incoming and outgoing calls), Telephone or Instrument number (including IMEI, IMSI, UFI, and ESN) and/or other customer/subscriber number used to identify customer/subscriber, Types of service used (e.g. push-to-talk, text, three-way calling, etc.), Means and source of payment (including any credit card or bank account number), Length of service (including start date and end date), Records of session times and duration for Internet connectivity which may be relevant to an authorized law enforcement inquiry, involving the following: Any and all records regarding USA SWIMMING and NORMAN HAVERCROFT.

Please see the attached page explaining some terms that may be used in this demand.

THE INFORMATION SOUGHT THROUGH THIS SUBPOENA RELATES TO A FEDERAL CRIMINAL INVESTIGATION BEING CONDUCTED BY THE FBI.**YOUR COMPANY IS REQUIRED TO FURNISH THIS INFORMATION.****YOU ARE REQUESTED NOT TO DISCLOSE THE EXISTENCE OF THIS SUBPOENA INDEFINITELY AS ANY SUCH DISCLOSURE COULD INTERFERE WITH AN ONGOING INVESTIGATION AND ENFORCEMENT OF THE LAW.**

Compliance must be made by personal appearance or production of records no later than the 28th day of February, 2013 at 10:00 o'clock AM, at 1919 South Bascom Avenue, Suite 400, Campbell, CA 95008

In lieu of a personal appearance, the information can be provided, via mail, marked to the attention of Special Agent Ronald Marino, at the following address: 1919 South Bascom Avenue, Suite 400, Campbell, CA 95008

If you refuse to obey this subpoena, the United States Attorney General may invoke the aid of a United States District Court to compel compliance. Your failure to obey the resulting court order may be punished as contempt.

Issued under authority of Public Law No. 106-544, §5(a)
(18 U.S.C. §3486)**ORIGINAL**Signature: *Christopher Carroll*
Name: CHRISTOPHER CARROLL
Title: SSA

Issued this 21st day of February, 2013

UNCLASSIFIED