

Exhibit A



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VIA EMAIL AND OVERNIGHT MAIL

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**Re: *Kimberly R. Sweidy v. Spring Ridge Academy*,
Case No. 3:21-cv-08013-SPL
United States District Court for the District of Arizona
Subpoena to Non-party Reddit, Inc.**

Dear Counsel:

We represent non-party Reddit, Inc., (“Reddit”) in responding to your subpoena (“Subpoena”) seeking information associated with a Reddit account that, as asserted in your cover letter, belongs to the Defendant. For the reasons below, Reddit objects to the Subpoena.

First, Reddit objects because the Subpoena seeks information available to the parties to the litigation. *See, e.g.*, Fed. R. Civ. P. 45(d)(1); *AECOM Tech. Servs., Inc. v. Zachry Constr. Corp.*, No. 219MC00201JAKRAOX, 2020 WL 1934973, at *5 (C.D. Cal. Feb. 3, 2020) (quashing non-party subpoenas because “most of the relevant documents and information” could be obtained from party opponents); *Intermarine LLC v. Spliethoff Bevrachtungskantoor, B.V.*, 123 F. Supp. 3d 1215, 1218-19 (N.D. Cal. 2015) (“[T]he Ninth Circuit has long held that nonparties subject to discovery requests deserve extra protection from the courts.”); *Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 977-78 (Fed. Cir. 1993) (affirming that district court properly required defendant to seek documents from party opponent before burdening non-party with subpoena duces tecum); *StoneEagle Srvs., Inc. v. Pay-Plus Sols., Inc.*, 2015 WL 1022083, at *2 (N.D. Ohio Mar. 9, 2015) (denying Defendant’s production request of a non-party where the request would require the non-party to produce documents that [Plaintiff] [was] “already required to produce”). If your Subpoena concerns an account associated with a party, there is no indication that you have made any attempts to obtain these documents from that party before pursuing non-party discovery. Reddit account holders can request a copy of their account data from Reddit here: <https://www.reddit.com/settings/data->



[request](#). A party account holder could easily request and collect their own data and produce it to you without burdening non-party Reddit. Further, if the information you seek is public, you can obtain it on your own.

Second, Reddit objects because your Subpoena seeks the contents of user communications, such as comments, upvotes, downvotes, and posts. The federal Stored Communications Act (“SCA”), 18 U.S.C. §§ 2701, *et seq.*, prohibits Reddit from disclosing the content of a user’s electronic communications. 18 U.S.C. § 2702(a). The SCA contains no exception allowing disclosure in response to civil discovery demands, and federal courts have therefore uniformly held that the SCA does not permit civil litigants to compel service providers such as Reddit to produce the content of electronic communications in response to civil discovery subpoenas or even court orders. *See Theofel v. Farey-Jones*, 359 F.3d 1066, 1073-74 (9th Cir. 2004) (holding that a civil discovery demand for content is not valid legal process under the SCA.).

Third, Reddit objects that the Subpoena seeks identifying information for an account holder and information about the actions taken by an account holder or what they engaged with on Reddit, thereby implicating the First Amendment rights of Reddit users to engage in anonymous speech. *See Smythe v. Does 1-10*, No. 15-mc-80292-LB, 2016 WL 54125 (N.D. Cal. Jan. 5, 2016) (denying the motion to enforce a subpoena against Twitter where movant failed to overcome user’s First Amendment right to anonymous speech). Before a subpoena can issue to a service provider like Reddit for information regarding the identity of an anonymous internet user, the party seeking the information must first “persuade[] the court that there is a real evidentiary basis for believing that the defendant has engaged in wrongful conduct that has caused real harm to the interests of the plaintiff.” *Music Grp. Macao Commercial Offshore Ltd. v. Does*, 82 F. Supp. 3d 979, 983 (N.D. Cal. 2015) (citing *Highfields Capital Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969, 975–76 (N.D. Cal. 2005)). This protection applies equally to records that would reveal what an account holder read. *See Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1063 (Colo. 2002) (holding that a search warrant for all information read by a person would not be executed). It does not appear that the Court has undertaken the First Amendment analysis here.

Fourth, Reddit objects to the Subpoena as vague, ambiguous, and overbroad because Reddit either does not understand your need for the requested data, or does not believe your request to be appropriately limited to data necessary for your litigation. All discovery requests must be relevant to a claim or defense or the subject matter of the underlying action. *See, e.g.*, Fed. R. Civ. P. 26(b). For example, the Subpoena seeks extensive information about an account holder’s activities on Reddit and other online conduct. The relevance of this information is unclear.

Fifth, Reddit objects to the Subpoena to the extent it seeks information that is not in Reddit’s possession, custody, or control.

Sixth, Reddit objects to the Subpoena to the extent it seeks the disclosure of information which Reddit is legally or contractually prohibited from disclosing or proprietary or confidential information, trade secrets, or information that may implicate third-party privacy rights.

Seventh, Reddit objects to the Subpoena to the extent it seeks information covered by attorney-client privilege, settlement privilege, work product, or any other applicable privilege or doctrine.

Eighth, Reddit objects to the Subpoena to the extent it seeks electronically stored information that is (1) not reasonably accessible by Reddit because of undue burden or expense; (2) obtainable from another source that is less burdensome, less expensive, or more convenient; and/or (3) unreasonably cumulative or duplicative, or where the likely burden or expense of producing the electronically stored information outweighs the likely benefit. For example, the Subpoena expressly seeks deleted content and information about deleted content. This is not reasonably accessible. *United States v. Amerigroup Ill., Inc.*, No. 02 C 6074, 2005 WL 3111972, at *3-7 (N.D. Ill. Oct. 21, 2005) (restoration of deleted content constitutes an “undue burden,” and nonparties are not subject to the significant burden of restoring such data.).

Finally, Reddit objects to the Subpoena and its instructions to the extent that they purport to impose any obligations beyond what is permissible under the Federal Rules of Civil Procedure or other applicable rules or law.

Please contact me if you have any questions or would like to confer regarding these objections. In the meantime, Reddit does not waive and expressly reserves all available rights and objections.

Sincerely,

Perkins Coie LLP

A handwritten signature in black ink, appearing to read "Ryan T. Mrazik", with a stylized, cursive script.

Ryan T. Mrazik