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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MOHAMED FODA, M.D., et al.,
Applicant,
v.
RATEMDS., INC.,
Respondent,

Case No.: C 10-80099 JW (PVT)
**INTERIM ORDER RE APPLICATION FOR
ORDER TO TAKE THIRD PARTY
DISCOVERY VIA SUBPOENA PURSUANT TO
28 U.S.C. § 1782**
(Re: Docket No. 1)

On April 29, 2010, "Applicants" Mohamed Foda, M.D. and Mohamed Foda, P.C. filed an Application for Order to Take Third Party Discovery via Subpoena Pursuant to 28 U.S.C. § 1782.¹ Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this interim order. Based on the application and the file herein,

IT IS HEREBY ORDERED that, no later than May 25, 2010, the Applicants shall serve a copy of the application, along with a copy of this order a proper notice of motion,² on every party to the foreign proceedings in connection with which the applicant seeks to use the requested discovery.

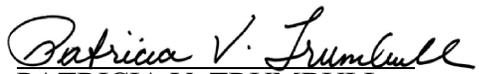
¹ The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

² Judge Trumbull hears law and motion at 10:00 a.m. on Tuesdays. Notice requirements are set forth in Civil Local Rule 7-2(a), and procedures for requesting shortened time, if warranted, are set forth in Civil Local Rule 6.

1 See *In re Letters Rogatory from Tokyo Dist. Prosecutor's Office, Tokyo, Japan*, 16 F.3d 1016, 1020
2 (9th Cir. 1994) (notice requirements of Federal Rules of Civil Procedure apply to discovery pursuant
3 to 28 U.S.C. § 1782(a)); *see also*, FED.R.CIV.PRO. 5(a)(1)(D) (requiring written motions to be served
4 on every party unless it may be heard *ex parte*).³ The notice of motion shall expressly identify the
5 tribunal, title and case number of the foreign proceedings in connection with which the applicant
6 seeks to use the requested discovery. Applicants shall promptly thereafter file a proof of service.

7 IT IS FURTHER ORDERED that, along with the application and notice of motion,
8 Applicants shall file and serve a supplemental brief that addresses the comment posters' First
9 Amendment right to anonymous speech. *See, e.g., Doe v. 2TheMart.com Inc.*, 140 F.Supp.2d 1088
10 (W.D. Wash. 2001) (noting that disclosure of a non-party who posts comments on the internet
11 anonymously "is only appropriate in the exceptional case where the compelling need for the
12 discovery sought outweighs the First Amendment rights of the anonymous speaker"); *see also, Best*
13 *Western Intern., Inc. v. Doe*, 2006 WL 2091695 (D.Ariz. 2006) and cases cited therein. The
14 supplemental brief shall also address the relevance to the claims or defenses in the foreign
15 proceedings of any deletion of positive comments from RateMDs.com.

16 Dated: 5/10/10

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18 PATRICIA V. TRUMBULL
19 United States Magistrate Judge
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28 ³ If the Applicant believes this motion may be heard *ex parte*, he shall cite to the statute, rule or order which permits the use of an *ex parte* motion to obtain the relief sought. *See*, CIV.L.R. 7-10.