

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

Google, Inc.

Plaintiff

v.

Jim Hood, Attorney General of the
State of Mississippi, in his official
capacity

Defendant

No. 3:14-cv-981-HTW-LRA

**ATTORNEY GENERAL JIM HOOD’S RESPONSE IN OPPOSITION TO MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

COMES NOW Jim Hood, Attorney General for the State of Mississippi in his official capacity (hereafter the “Attorney General” or “General Hood”), and files his response in opposition to Google’s motion for temporary restraining order and preliminary injunction and states:

1. Google asks this Court to enjoin the Attorney General from any further investigation of Google and preemptively bar him from ever instituting civil litigation or criminal charges against by virtue of 47 U.S.C. § 230 of the Communications Decency Act (“CDA”). Supp. Mem. at 2.

2. Google also contends the Attorney General’s Subpoena is preempted by the Copyright Act, 17 U.S.C. §§ 301, 512, and the Food, Drug, and Cosmetics Act (“FDCA”), 21 U.S.C. § 337 and that “[m]any of the Attorney General’s inquiries concern copyright infringement. . . .” *Id.* at p. 3.

3. Google claims the FDCA bars the Attorney General from obtaining documents and information “relating to the importation of prescription drugs.” *Id.* Although Google objects to the investigation arguing it violates the enumerated statutory and constitutional provisions, Google does not challenge the constitutional validity of any state statute through which General Hood is conducting his investigation

4. Google’s declaratory judgment action should be dismissed for lack of subject matter jurisdiction. Google has not stated claims arising under 28 U.S.C. § 1331 but has asserted defenses to anticipated but not filed state law claims. As such, jurisdiction is lacking under Section 1331.

5. Google has failed to establish subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) as it has failed to state a claim against the Attorney General under 42 U.S.C. § 1983.

6. Alternatively, the case should be dismissed under the *Younger* abstention doctrine, set forth in *Younger v. Harris*, 401 U.S. 37 (1971), and its progeny.

7. Finally, the case should be dismissed because Google’s claims are not ripe for adjudication. *See Reno Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

8. In further support of the response in opposition to the motion for temporary restraining order and preliminary injunction, the Attorney General relies on the following:

- A. Memorandum in Support of Motion to Dismiss Complaint Based on Jurisdiction and Other Grounds, filed separately [**EXHIBIT A**];
- B. Administrative Subpoena and Subpoena Duces Tecum [**EXHIBIT B**];
- C. Google Non-Prosecution Agreement; [**EXHIBIT C**];
- D. February 13, 2013 Letter from Attorneys General of Hawaii, Mississippi, Virginia [**EXHIBIT D**];

- E. Declaration of Bridgette Wiggins [**EXHIBIT E**];
 - 1. Assurance of Voluntary Compliance dated March 8, 2013 [**Wiggins Decl. EXHIBIT 1**];
 - 2. Assurance of Voluntary Compliance dated March 11, 2013 [**Wiggins Decl. EXHIBIT 2**];
- F. Letter from Attorneys General from Nebraska and Oklahoma dated July 2, 2013 Letter [**EXHIBIT F**];
- G. Letter from Attorneys General from Nebraska, Hawaii, Virginia and General Hood dated October 7, 2013 Letter [**EXHIBIT G**];
- H. Letter from twenty-three (23) Attorneys General, including General Hood, dated December 10, 2013 [**EXHIBIT H**];
- I. Letters from General Hood to Google dated April 1, 2013, May 21, 2013, and June 10, 2013 [**EXHIBIT I**].

WHEREFORE, PREMISS CONSIDERED, Jim Hood, Attorney General for the State of Mississippi in his official capacity, requests that the Court deny Google's motion for temporary restraining order and preliminary injunction and requests such other relief as the Court deems proper.

This the 12th day of January, 2015.

Respectfully Submitted,

JIM HOOD, ATTORNEY GENERAL FOR THE
STATE OF MISSISSIPPI, in his official capacity

By: JIM HOOD, ATTORNY GENERAL FOR THE
STATE OF MISSISSIPPI

By: /s/ Douglas T. Miracle
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CERTIFICATE OF SERVICE

I, Douglas T. Miracle, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I electronically filed the foregoing document with the Clerk of this Court using the ECF system and sent a true and correct copy to counsel of record:

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This the 12th day of January, 2015.

/s/ Douglas T. Miracle
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