

Derek S. Khanna (Cal. Bar No. 308563)
706 Tesoro Road
Monterey, CA 93940
Tel: (202) 643-248
Email: Derek.Khanna@gmail.com

Mark I. Bailen (D.C. Bar No. 459623), *Pro Hac Vice Forthcoming*
Bailen Law
1250 Connecticut Ave NW, Suite 700
Washington, DC 20036
Tel: (202) 656-0422
Email: mb@bailenlaw.com

April Mackenna White (N.Y. Bar No. 4799953), *Pro Hac Vice Forthcoming*
Bailen Law
100 Wall Street, Suite 1702
New York, NY 10005
Tel: (646) 397-3496
Email: mwhite@bailenlaw.com

Attorneys for the Plaintiff, Kurraba Group Exposed

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Kurraba Group Exposed, an
unincorporated association,

Plaintiff,

v.

Kurraba Group Pty Ltd, a New South
Wales, Australia, private limited company

Nicholas "Nick" Mark Smith, an
individual residing in New South Wales,
Australia,

Defendants.

Case No. _____

**DECLARATION OF PLAINTIFF'S LOCAL
COUNSEL DEREK KHANNA**

DECLARATION OF DEREK KHANNA

DECLARATION OF PLAINTIFF'S LOCAL COUNSEL DEREK KHANNA

1 I, Derek S. Khanna, declare as follows:

2 1. For the below, I did not personally send the emails in question, but have
3 reviewed the correspondence and assert to their accuracy to the best of my knowledge.

4 2. **Attorney Role & Background:** I am an attorney licensed in the State of
5 California and counsel of record for Plaintiff Kurraba Group Exposed ("Plaintiff" or "KGE")
6 in the above-entitled action. I make this declaration in compliance with Civil Local Rule 65-1
7 to certify the notice that has been provided to the Defendants regarding Plaintiff's impending
8 application for a Temporary Restraining Order ("TRO"). The facts stated herein are within my
9 personal knowledge or based on information provided to me by Plaintiff. Defendants received
10 our communications, as shown in the email tracking report, showing that the October 22 letter
11 was opened multiple times, but did not respond or took any clear corrective action.

12 2. **Initial Inquiry to Google (October 20, 2025):** On October 20, 2025, Plaintiff
13 Kurraba Group Exposed, through its representatives, sent a written communication via email
14 to Google LLC, seeking assistance and information on how to restore or "unblock" KGE's
15 website in Google's search results. This email described the situation in which KGE's content
16 had been de-indexed or suppressed on Google search, apparently due to a foreign (Australian)
17 court order, and inquired about the process or possibility of reversing that action. A true and
18 correct copy of the email sent to Google on October 20, 2025, is attached hereto as Exhibit 1.
19 Despite this outreach, no response was received from Google. As of the date of this declaration,
20 Google still has not provided any reply or assistance in response to the October 20 inquiry.

21 3. **Letter to Kurraba Group and Nick Smith (October 22, 2025):** On October 22,
22 2025, Plaintiff Kurraba Group Exposed sent a formal letter to Defendants Kurraba Group Pty
23 Ltd and Nicholas "Nick" Smith. This letter foreshadowed imminent U.S. litigation and
24 demanded corrective action to address the censorship of KGE's website. In particular, the letter
25 notified Kurraba Group and Mr. Smith that their actions in obtaining and leveraging an

DECLARATION OF PLAINTIFF'S LOCAL COUNSEL DEREK KHANNA

1 Australian gag order against KGE's U.S.-based speech were unlawful. A draft copy of the U.S.
2 Complaint that Plaintiff intended to file, substantially similar to the Verified Complaint filed
3 in this action, was enclosed with the letter, so Defendants would fully understand the claims
4 and relief that Plaintiff would pursue. While I was not counsel at this time, I have reviewed this
5 correspondence and based on that review assert that a true and correct copy of the October 22,
6 2025, demand letter is attached hereto as Exhibit 2.

7 **4. Transmission and Receipt of October 22 Letter:** The October 22 letter (Ex.
8 2) was transmitted to Defendants via email on that same date. Plaintiff, via its representatives,
9 emailed the letter, with the draft complaint and exhibits attached, to Kurraba Group, Mr. Nick
10 Smith (<info@kurragroup.com>), and their attorneys (Jim Micallef
11 <Jim.Micallef@corrs.com.au>, Mark Wilks <Mark.Wilks@corrs.com.au>), using the email
12 contact information Plaintiff had for them, including by replying to the addresses Defendants'
13 attorneys had previously used to communicate with Plaintiff. These emails were sent to
14 Defendants on October 22, 2025. I have been informed, and do believe, that an email-tracking
15 tool used by Plaintiff indicated that the email containing the letter was opened at least seven
16 (7) times by the recipients, suggesting that Defendants received and viewed the letter multiple
17 times. Despite clear evidence of receipt, neither Kurraba Group nor Mr. Smith responded to or
18 acknowledged the October 22 letter or the attached draft complaint. Defendants did not contact
19 Plaintiff or me to offer any remedy, explanation, or to otherwise discuss the matter after this
20 notice.

21 **5. Local Rule 65-1 Notice of TRO Application (October 25, 2025):** In
22 accordance with Civil Local Rule 65-1 and out of an abundance of caution to provide notice,
23 on October 25, 2025, Plaintiff sent an email to all Defendants advising them of Plaintiff's intent
24 to seek an *ex parte* Temporary Restraining Order in U.S. District Court. Specifically, on that
25 date Plaintiff emailed (a) Defendant Kurraba Group Pty Ltd (through the same email previously

DECLARATION OF PLAINTIFF'S LOCAL COUNSEL DEREK KHANNA

1 used for correspondence); (b) Defendant Nicholas “Nick” Smith (to his known email address,
2 which had been used in prior communications); and (c) Defendants’ counsel, James Micallef
3 and Mark Wilks. True and correct copy of the covering email serving the Rule 65-1 notice sent
4 on October 25 to Kurraba Group Pty Ltd and to Nicholas Smith is attached as Exhibit 3.

5 In that notice, Plaintiff stated it would seek immediate injunctive relief to bar
6 enforcement of the Australian order and to restore KGE’s online content, and Plaintiff included
7 a summary of the relief to be requested. A true and correct copy of the October 25, 2025, notice
8 is attached hereto as Exhibit 4. This email stated that, pursuant to Local Rule 65-1, we were
9 providing notice of the date and substance of the TRO application and identified the general
10 nature of the relief sought. The notice email was sent to Defendants on October 25, 2025.
11 Consistent with Mullane’s due-process requirement that notice be ‘reasonably calculated’ to
12 reach the adverse party, and Ninth Circuit/N.D. Cal. approvals of electronic notice (see *Rio*
13 *Properties*, 284 F.3d at 1016–18; *St. Francis Assisi*, 2016 WL 5725002, at *1–2; *Facebook v.*
14 *Banana Ads*, No. 11-cv-03619-YGR), Plaintiffs provided pre-filing email notice of the
15 impending TRO to counsel at the email addresses they have used to communicate about this
16 dispute; Fed. R. Civ. P. 65(b)(1)(B) and N.D. Cal. Civ. L.R. 65-1(b) requires reasonable efforts
17 and timely notice, not a particular medium.”

18 6. **No Responses from Defendants:** As of the time of this declaration, none of the
19 Defendants has responded to the October 25, 2025 notice of the TRO application. Plaintiff has
20 not received any email, phone call, or any form of communication from Kurraba Group Pty
21 Ltd or Nicholas Smith in response to either the October 22 demand letter or the October 25
22 TRO notice email. Google has provided no assistance or assurance that it would restore the
23 content absent a court order. Thus, Plaintiff requires Court intervention to obtain any relief. To
24 my knowledge, no attorney or representative for Kurraba Group or Mr. Smith has appeared in
25 the United States or contacted either Plaintiff or me regarding this dispute. Thus, Defendants

DECLARATION OF PLAINTIFF'S LOCAL COUNSEL DEREK KHANNA

1 have been informed of Plaintiff's intent to seek emergency relief, yet they have made no
2 attempt to resolve the issue or oppose the relief prior to filing.

3 7. **Justification for *Ex Parte* Relief:** Considering the foregoing, Plaintiff
4 proceeded to file the TRO application *ex parte*. Good cause exists: specific facts detailed above
5 and in the accompanying declarations clearly show that immediate and irreparable injury to
6 Plaintiff's First Amendment rights will occur before Defendants can be heard in opposition,
7 and Plaintiff's counsel has certified efforts to give notice as required by law. Defendants
8 Kurraba Group and Mr. Smith are foreign parties, located in Australia, and have not appeared
9 in any U.S. proceeding or retained U.S. counsel known to Plaintiff, making the timing of any
10 inter partes hearing uncertain. Moreover, given the ongoing irreparable harm to Plaintiff's First
11 Amendment rights with each passing day and Defendants' lack of any response, Plaintiff
12 believes that waiting for a formally noticed motion, which would entail significant delay, would
13 simply allow the harm to continue. Further attempts to contact Defendants are likely futile
14 under the circumstances. Nonetheless, as described above, Plaintiff gave Defendants actual
15 notice of its intent to seek this TRO, satisfying the notice requirements of Local Rule 65-1.
16 Despite notice, no Defendant responded or sought to be heard, which supports proceeding *ex*
17 *parte*. The *ex parte* application is necessitated by the urgent need to restore Plaintiff's and
18 Plaintiff's members' free speech rights and the time-sensitive nature of the relief.

19 I declare under penalty of perjury under the laws of the United States of America, pursuant to
20 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on: October 28, 2025

Signed under penalty of perjury,

Derek S. Khanna (Cal. Bar No. 308563)
706 Tesoro Road
Monterey, CA 93940
Tel: (202) 643-2483
Email: Derek.Khanna@gmail.com

/s/Derek S. Khanna

DECLARATION OF PLAINTIFF'S LOCAL COUNSEL DEREK KHANNA

Derek S. Khanna

*Attorney for the Plaintiff
Kurraba Group Exposed*