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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 IN RE:

Case No.: **CV08-06731**

17 RULE 45 SUBPOENA ISSUED TO  
18 RICOCHET TELEVISION, INC.

**PATRIARCH'S MEMORANDUM IN  
SUPPORT OF ITS MOTION TO  
COMPEL COMPLIANCE WITH  
NONPARTY DOCUMENT  
SUBPOENA TO RICOCHET  
TELEVISION, INC.**

20 JASON COLODNE,

21 Plaintiff,

23 v.

24 PATRIARCH PARTNERS, LLC,

25 Defendant.

Date:  
Time:  
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Judge:

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**TABLE OF CONTENTS**

1  
2  
3  
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5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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Preliminary Statement..... 1

Background..... 2

Discussion..... 3

I. New York Law Applies to This Dispute..... 3

II. Ricochet’s Employees Are Not Professional Journalists  
For Purposes of New York’s Journalist Shield Law..... 4

III. Alternatively, California’s Journalist Shield Laws Do  
Not Apply Because the *Real Housewives* Show Is Not News..... 8

Conclusion..... 10

**TABLE OF AUTHORITIES**

Cases

1

2

3

4 Andrews v. Andreoli

5 92 Misc. 2d 410, 400 N.Y.S.2d 442 (N.Y. Sup. Ct. 1977) ..... 5

6 Bulow v. von Bulow

7 811 F.2d 136 (2d Cir. 1987) ..... 6

8 Connelly Data Sys., Inc. v. Victor Techs., Inc.

9 114 F.R.D. 89 (S.D. Cal. 1987) .....4

10 CSX Transp., Inc. v. Lexington Ins. Co.

11 187 F.R.D. 555 (N.D. Ill. 1999) ..... 3

12 Delaney v. Superior Court

13 789 P.2d 934 (Cal. 1990) ..... 8

14 Deutsch v. Turner Corp.

15 324 F.3d 692 (9th Cir. 2003) .....3

16 In re DG Acquisition Corp.

17 151 F.3d 75 (2d Cir. 1998) ..... 9

18 In re Grand Jury Subpoenas Served on Nat’l Broad. Co., Inc.

19 683 N.Y.S.2d 708 (N.Y. Sup. Ct. 1998) ..... 5

20 In re Madden

21 151 F.3d 125 (3d Cir. 1998) ..... 7

22 Klaxon Co. v. Stentor Electric Mfg. Co.

23 313 U.S. 487 (1941) ..... 3

24 Moon v. SCP Pool Corp.

25 232 F.R.D. 633 (C.D. Cal. 2005) ..... 9

26 O’Grady v. Sup. Ct.

27 44 Cal. Rptr. 3d 72 (Cal. App. 6th Dist. 2006) ..... 8

28 People v. LeGrand

415 N.Y.S.2d 252 (N.Y. App. Div. 2d Dep’t 1979) ..... 5

Platypus Wear Inc. v. K.D. Company, Inc.

905 F. Supp. 808 (S.D. Cal. 1995) .....4

1 Rancho Publications v. Sup. Ct.  
 2 81 Cal. Rptr. 2d 274 (Cal. App. 4th Dist. 1999) ..... 8

3 Remington Arms Co. v. Liberty Mut. Ins. Co.  
 4 142 F.R.D. 408 (D. Del. 1992) ..... 3

5 Seeling v. Infinity Broad. Corp.  
 6 119 Cal. Rptr. 2d 108..... 8

7 Statutes

8 Cal. Const. Art. I, § 2(b) ..... 8

9 N.Y. Civil Rights L. § 79-h(a)(6)..... 5

10 N.Y. Civil Rights L. § 79-h(a)(7)..... 5

11 N.Y. Civil Rights L. § 79-h(a)(8)..... 5

12 N.Y. Civil Rights L. § 79-h(b) ..... 4

13 Rules

14 Fed. R. Evid. 501..... 3

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1 for that matter) treats reality television as a source of news or expects “reality” shows  
2 to accurately or objectively portray the underlying facts. It would serve no purpose  
3 whatsoever, and contravene the express language of the shield laws, to give media  
4 entertainment producers a special exemption from the general obligation of all  
5 corporate citizens to comply with lawful subpoenas. Patriarch’s motion to compel  
6 should be granted.

## 7 BACKGROUND

8  
9 In early 2007, plaintiff Jason Colodne was terminated from his position as  
10 president of Patriarch Partners, LLC, the collateral manager for several investment  
11 vehicles. (Michael Decl. Ex. 1, Compl. ¶¶ 4-27.) Colodne’s complaint alleges that he  
12 was terminated without cause and is therefore entitled to \$55 million under his  
13 employment contract. (Michael Decl. Ex. 1, Compl. ¶¶ 26-26.) In fact, Colodne was  
14 terminated for ample cause, including because, without any prior warning to Patriarch,  
15 and in violation of both his contract and Patriarch’s media policy, he participated in the  
16 filming of *The Real Housewives of New York City*. (Michael Decl. Ex. 2, Tilton Dep.  
17 132-43.) Patriarch’s CEO Lynn Tilton first learned of Colodne’s participation in the  
18 show when he appeared in commercials for the show that were discussed around the  
19 office. (Michael Decl. Ex. 2 134-35.) She fired him the same day. (*Id.*)

20 The *Real Housewives* show was produced by Ricochet, whose website describes  
21 it as an “ultra stylish docu-soap” that “follow[s] the privileged lives of New York’s  
22 high society women and their families.” (Michael Decl. Ex. 3.) Among the five  
23 featured “housewives” was Bethenny Frankel, who came on the show because she  
24 “wanted the exposure for her business, Bethennybakes.” (Michael Decl. Ex. 4, Robert  
25 Rorke & Melissa Jane Kronfeld, *Wives’ Tale, From Bling to Botox, NYC Society*  
26 *Dames Tell All*, N.Y. POST, Mar. 2, 2008, at 2-3.) The show “spotlight[ed]” her  
27 personal life, including that she was dating “finance guru” Jason Colodne and  
28 “long[ed] to move downtown with him and have a child together.” (*Id.*)

1 On September 9, 2008, Patriarch served Ricochet with a subpoena seeking  
2 documents relating to Colodne’s participation in the show. (Michael Decl. Ex. 5.)  
3 Ricochet objected to producing any documents on the grounds that its employees are  
4 “television reporters” who are protected by the journalist shield laws of New York and  
5 California. (Michael Decl. Ex. 6, at 2.) Ricochet did not object to the subpoena on any  
6 other grounds.

7 **DISCUSSION**

8  
9 **I. NEW YORK LAW APPLIES TO THIS DISPUTE.**

10 To determine which law applies to this dispute, this Court first applies the  
11 choice-of-law rules of the forum state of California. FED. R. EVID. 501; *Klaxon Co. v.*  
12 *Stentor Electric Mfg. Co.*, 313 U.S. 487, 497 (1941). California applies the  
13 “governmental interest” approach, which compares the “respective interests of the  
14 states involved.” *Deutsch v. Turner Corp.*, 324 F.3d 692, 717 (9th Cir. 2003).  
15 Contrary to Ricochet’s stated position in its objections, the state with the largest  
16 interest in this dispute is plainly New York, not California:

- 17
- 18 • The complaint asserts only claims under the law of New York, where the  
19 underlying case is pending. *See, e.g., CSX Transp., Inc. v. Lexington Ins.*  
20 *Co.*, 187 F.R.D. 555, 557 (N.D. Ill. 1999) (collecting cases and concluding  
21 that “the state supplying the rule of decision in substantive issues also  
22 supplies the rule” for purposes of privilege); *Remington Arms Co. v.*  
23 *Liberty Mut. Ins. Co.*, 142 F.R.D. 408, 411 (D. Del. 1992).
  - 24 • The show was taped—and is indeed about—New York.
  - 25 • The subject of the subpoena, Jason Colodne, was in New York while he  
26 communicated with Ricochet, and indeed met a Ricochet producer there to  
27 first discuss his appearance on the show. (Michael Decl. Ex. 7, Colodne  
28 Dep. 159 (Colodne never traveled to Los Angeles during the relevant

1 timeframe); 321 (describing meeting in Bridgehampton, New York).) *See*  
 2 *Connolly Data Sys., Inc. v. Victor Techs., Inc.*, 114 F.R.D. 89, 92-93 (S.D.  
 3 Cal. 1987) (applying privilege law of the state where the “substantive  
 4 communications that are the subject of [the] dispute took place”).

- 5 • Colodne and Ricochet executed an appearance contract stipulating that  
 6 New York law would govern their relationship. (Michael Decl. Ex. 7,  
 7 Colodne Dep. 319-32 (identifying release form that Colodne received and  
 8 stating that he did not recall altering it); Ex. 8 § 12.) *See Platypus Wear,*  
 9 *Inc. v. K.D. Company, Inc.*, 905 F. Supp. 808, 812-13 (S.D. Cal. 1995)  
 10 (applying privilege laws of the state where the case would be tried and  
 11 whose laws governed the contract that was the basis for the lawsuit).

12 While Ricochet has offices in California, the interest of California in applying its  
 13 own laws to one of its citizens pales in comparison to New York’s interest in applying  
 14 its laws to communications within and concerning New York, especially where  
 15 Ricochet chose to film the show in New York and agreed that New York law would  
 16 apply to its dealings with Colodne. Since New York’s interest is far greater than  
 17 California’s, New York law applies. (As set forth below, the result is the same under  
 18 the laws of either state, in any event.)

19 **II. RICOCHET’S EMPLOYEES ARE NOT PROFESSIONAL**  
 20 **JOURNALISTS FOR PURPOSES OF NEW YORK’S JOURNALIST**  
 21 **SHIELD LAW.**

22 Under New York’s journalist shield law, “no professional journalist or  
 23 newscaster . . . shall be adjudged in contempt by any court . . . for refusing or failing to  
 24 disclose any unpublished news obtained or prepared by a journalist or newscaster in the  
 25 course of gathering or obtaining news,” unless the party seeking the information can  
 26 make a specific showing of need. N.Y. CIVIL RIGHTS L. § 79-h(b). A “professional  
 27 journalist” is defined as someone who is “engaged in gathering . . . news intended for  
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1 a . . . professional medium or agency which has as one of its regular functions the  
2 processing and researching of news intended for dissemination to the public.” N.Y.  
3 CIVIL RIGHTS L. § 79-h(a)(6). “News” is defined as “written, oral, pictorial,  
4 photographic, or electronically recorded information or communication concerning  
5 local, national or worldwide events or other matters of public concern or public interest  
6 or affecting the public welfare.” N.Y. CIVIL RIGHTS L. § 79-h(a)(8).<sup>1</sup>

7 The purpose of the law is to “str[ike] a balance between the urgent requirements  
8 of litigants in both civil and criminal courts, and the countervailing need to prevent the  
9 undue diversion of journalistic effort and disruption of press functions,” including “the  
10 sensitive role of gathering and disseminating news of public events.” *In re Grand Jury*  
11 *Subpoenas Served on Nat’l Broad. Co., Inc.*, 683 N.Y.S.2d 708, 711 (N.Y. Sup. Ct.  
12 1998) (internal quotations and citations omitted). The party invoking the shield bears  
13 the initial burden to prove its application. *See Andrews v. Andreoli*, 92 Misc.2d 410,  
14 400 N.Y.S.2d 442, 448 (N.Y. Sup. Ct. 1977).

15 Ricochet cannot carry this burden because its employees are in the business of  
16 entertainment, and are not remotely “professional journalists” under New York law. In  
17 fact, New York case law is quite clear that the definition of “professional journalist”  
18 does not encompass everyone who may disseminate elements of nonfiction material.  
19 In *People v. LeGrand*, 415 N.Y.S.2d 252, 254-56 (N.Y. App. Div. 2d Dep’t 1979), a  
20 writer who had previously worked for CBS and NBC news was not deemed to be  
21 acting as a “professional journalist” while he was interviewing members of a crime  
22 family for a forthcoming nonfiction book. The court observed: “These provisions  
23 evince a clear legislative design to benefit ‘professional journalists’ and ‘newscasters’  
24 only. They should not by judicial fiat and strained interpretation be deemed to  
25 encompass those engaged in a different field of writing and research.” *Id.* at 255; *see*

26 \_\_\_\_\_  
27 <sup>1</sup> Ricochet does not appear to claim (nor could it plausibly claim) that it is a  
28 “newscaster,” which is defined as “a person who, for gain or livelihood, is engaged in  
analyzing, commenting on or broadcasting, news by radio or television transmission.”  
N.Y. CIVIL RIGHTS L. § 79-h(a)(7).

1 *also von Bulow v. von Bulow*, 811 F.2d 136, 143-45 (2d Cir. 1987) (citing *LeGrand*  
2 and holding that notes taken by a writer for purposes of a book about accused murderer  
3 Claus von Bulow were not protected).

4 If nonfiction book authors occupy a “different field of writing and research” than  
5 journalists, *see LeGrand*, 415 N.Y.S.2d at 355, then reality television producers are in  
6 a wholly different universe. For one thing, reality television does not even purport to  
7 convey an accurate account of the events being filmed. In this case, for example,  
8 Ricochet secured the right to “edit, delete, dub and/or fictionalize” the footage of its  
9 cast members (Michael Decl. Ex. 8 § 1.) Cast members fully acknowledge by  
10 contract that the producers may “portray [them] in a false light,” and that the footage of  
11 them may be “embarrassing or of an otherwise unfavorable nature that may be factual  
12 or fictional.” (Michael Decl. Ex. 8 § 6 (emphasis added).) Journalists, who do not  
13 enter into appearance contracts with (or conduct casting calls for) the newsmakers they  
14 cover, do not have such artistic license.

15 Further, as is commonly known, reality show producers frequently exercise their  
16 license to script or otherwise fictionalize their shows in ways that obscure the actual  
17 underlying facts. As the *Washington Post* reported, reality shows often employ “‘story  
18 editors’ or ‘segment producers,’ who use the expression ‘frankenbites’ (after Dr.  
19 Frankenstein's monster) to describe the art of switching around contestant sound bites  
20 recorded at different times and patched together to create what appears to be a seamless  
21 narrative.” (See Michael Decl. Ex. 9, William Booth, *Reality is Only an Illusion*,  
22 WASHINGTON POST, Aug. 10, 2004, at C1; *see, also, e.g.*, Ex. 10, Doug Elfman,  
23 *Naughty secrets of reality TV: Insiders tell the tricks that make stars—and viewers—*  
24 *look like fools*, CHICAGO SUN-TIMES, Oct. 26, 2005; Ex. 11, Norma Meyer, *Reality*  
25 *fighters—Writers say they’re being abused at shows that are heavily scripted and as*  
26 *contrived as can be*, SAN DIEGO UNION-TRIBUNE, Oct. 24, 2005.)

27 The *Los Angeles Times* observed, for example, that the first iteration of the *Real*  
28 *Housewives* series, *The Real Housewives of Orange County*, “layer[ed] on the scripted

1 scenarios,” (Michael Decl. Ex. 12, Paul Brownfield, *‘Housewives’ in a parallel*  
2 *universe,* L.A. TIMES, Mar. 21, 2006, at E-1), and the *Columbia Spectator* criticized  
3 *The Real Housewives of New York City* as seeming too “scripted.” (Michael Decl. Ex.  
4 13, *Real Housewives of New York City as Fake as Their Flaunted Assets*, COLUMBIA  
5 SPECTATOR, Mar. 5, 2008.) The fact that calling a reality show “scripted” is a  
6 comment on the producer’s craftsmanship—and not a betrayal of the craft itself—  
7 illustrates the vast gulf separating reality television from journalism.

8 The point here is not to criticize Ricochet for dishonesty. Rather, it is to  
9 highlight the indisputable fact that the genre of reality television is not intended by its  
10 producers, nor understood by its viewers, as anything resembling news or journalism.  
11 It is, as one of the *Real Housewives* told the *New York Times*, “entertainment, nothing  
12 more.” (Michael Decl. Ex. 14, Felicia R. Lee, *Being a Housewife Where Neither House*  
13 *Nor Husband is Needed*, N.Y. TIMES, Mar. 5, 2006.)

14 The case of *In re Madden*, 151 F.3d 125, 130 (3d Cir. 1998) is highly instructive  
15 to this distinction. In that case, nonparty witness Mark Madden, who proclaimed  
16 himself “Pro Wrestling’s only real journalist,” recorded commentaries on pro wrestlers  
17 that could be heard by dialing a 1-900 number. *Id.* Madden invoked the federal  
18 journalist’s privilege to resist deposition testimony, and the district court found that,  
19 since Madden “sought, gathered or received materials . . . with the intention of  
20 disseminating that material, he was a journalist.” *Id.* The Third Circuit squarely  
21 rejected this approach and found that he was “an entertainer, not a reporter,” and  
22 further observed that, like other creators of entertainment, he was “permitted to view  
23 facts selectively [and] change the emphasis or chronology of events—license a  
24 journalist does not have.” *Id.* The Court concluded that, “[b]ecause Madden is not a  
25 journalist, it follows that he cannot conceal his information within the shadow of the  
26 journalist’s privilege.” *Id.*

27 The same is true in this case. Patriarch’s motion should be granted.  
28

1 **III. ALTERNATIVELY, CALIFORNIA’S JOURNALIST SHIELD LAWS DO**  
2 **NOT APPLY BECAUSE THE *REAL HOUSEWIVES* SHOW IS NOT**  
3 **NEWS.**

4 Even if the Court were to apply California law, the result would be the same.  
5 Under California’s Evidence Code and Constitution, members of the media are  
6 protected from being held in contempt for refusing to disclose “unpublished  
7 information obtained or prepared in gathering, receiving or processing of information  
8 for communication to the public.” CAL. CONST., art. I, § 2(b); CAL. EVID. CODE  
9 § 1070. Just as with New York’s shield law, the purpose of these provisions is to “to  
10 protect a newsperson’s ability to gather and report the news.” *Delaney v. Superior*  
11 *Court*, 789 P.2d 934, 946 n.20 (Cal. 1990). And, as with New York’s shield law, the  
12 burden of proving their application lies squarely with the party invoking it. *Id.*

13 Ricochet cannot possibly meet that burden because information concerning the  
14 *Real Housewives* show is simply not the type of information contemplated for  
15 protection by California’s journalist shield laws. As the court in *Rancho Publications*  
16 *v. Superior Court*, 81 Cal. Rptr. 2d 274, 278 (Cal. App. 4th Dist. 1999) correctly  
17 reasoned, the phrase “information for communication to the public” refers to  
18 “legitimate journalistic” activities. To read the journalist shield laws to include  
19 literally *any* information communicated to the public—such as the newspaper  
20 advertisement at issue in that case—would be “absurd.” *Id.*; *see also O’Grady v.*  
21 *Superior Court*, 44 Cal. Rptr.3d 72, 77 (Cal. App. 6th Dist. 2006) (noting that the  
22 “shield law is intended to protect the gathering and dissemination of *news*”) (emphasis  
23 in original).

24 Ricochet’s reliance upon *Seeling v. Infinity Broad. Corp.*, 119 Cal. Rptr. 2d 108  
25 (Cal. App. 1st Dist. 2002) in its objections is misplaced. (Michael Decl. Ex. 6, at 2.)  
26 That case held that talk radio commentary insulting a participant on *Who Wants to*  
27 *Marry a Millionaire* was “made in a . . . a public forum in connection with an issue of  
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1 public interest” and therefore protected by California free speech laws against a claim  
2 of defamation. *Id.* at 115-16. The case had nothing whatsoever to do with the  
3 reporter’s shield laws. We have no doubt that California law would protect speakers  
4 from commenting upon, or even insulting, the *Real Housewives* or any other television  
5 show, whether fiction or nonfiction. But the fact that entertainment shows may  
6 generate commentary of public interest—as with, for example, *The Simpsons* or *The*  
7 *Sopranos*—does not transform them into news programs.

8         Simply put, the *Real Housewives* show does not constitute the type of  
9 “information”—*i.e.*, news—that is contemplated by California’s shield laws. As with  
10 advertisement in *Rancho Publications*, the fact that the show is purportedly nonfiction  
11 and disseminated for public consumption does not suffice. The purpose of protecting  
12 journalists and their sources is not advanced in the slightest by allowing reality  
13 television producers to avoid the subpoena obligations, and the journalists shield laws  
14 should not be construed to allow them to do so. Thus, even under California law,  
15 Patriarch’s motion should be granted.<sup>2</sup>

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25 <sup>2</sup> Ricochet’s *only* objection to producing documents was based on the journalist shield  
26 laws of New York and California. (Michael Decl. Ex. 6.) Since Rule 45 requires “the  
27 recipient of a subpoena to raise all objections at once,” *In re DG Acquisition Corp.*,  
28 151 F.3d 75, 81 (2d Cir. 1998), any other objections should be deemed waived, and  
Ricochet should not be allowed raise any new objections for the first time before this  
Court. *E.g.*, *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005).


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**CONCLUSION**

For the stated reasons, Ricochet Television, Inc. should be ordered to comply with the document subpoena served upon it by Patriarch Partners, LLC.

DATED: October 10, 2008

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