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FILED
 MAR 22 2011
 RICHARD W. WIKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

5 **UNITED STATES DISTRICT COURT**
 6 **NORTHERN DISTRICT OF CALIFORNIA**

CRB

7 IN RE MAXIMIZED LIVING, INC.) Case No.:

CV 11, 80 061 MISC

8 Applicant,) **MISCELLANEOUS ACTION:**

9 vs.)

) **REQUEST FOR IDENTITY OF**

10 GOOGLE, INC.) **INFRINGERS PURSUANT TO**

) **17 U.S.C. § 512(h)**

11 Respondent.)

)

)

)

)

12 Pursuant to 17 U.S.C. § 512(h), Applicant Maximized Living, Inc. hereby
 13 requests the Clerk of this Court to issue a Subpoena Duces Tecum to Respondent
 14 Google, Inc. in the form attached as Exhibit A, and respectfully show the Court as
 15 follows:

16 **I.**

17 **APPLICABLE LAW**

18 17 U.S.C. § 512(h) provides:

1
2 (h) Subpoena to identify infringer.

3 (1) Request. A copyright owner or a person authorized
4 to act on the owner's behalf may request the clerk of any
5 United States district court to issue a subpoena to a
6 service provider for identification of an alleged infringer
in accordance with this subsection.

7 (2) Contents of request. The request may be made by
8 filing with the clerk--

9 (A) a copy of a notification described in subsection
10 (c)(3)(A);

11 (B) a proposed subpoena; and

12 (C) a sworn declaration to the effect that the purpose
13 for which the subpoena is sought is to obtain the identity
14 of an alleged infringer and that such information will
15 only be used for the purpose of protecting rights under
this title.

16 (3) Contents of subpoena. The subpoena shall authorize
17 and order the service provider receiving the notification
18 and the subpoena to expeditiously disclose to the
19 copyright owner or person authorized by the copyright
20 owner information sufficient to identify the alleged
21 infringer of the material described in the notification to
the extent such information is available to the service
provider.

22 (4) Basis for granting subpoena. If the notification filed
23 satisfies the provisions of subsection (c)(3)(A), the
24 proposed subpoena is in proper form, and the
25 accompanying declaration is properly executed, the clerk
26 shall expeditiously issue and sign the proposed subpoena
27 and return it to the requester for delivery to the service
28 provider.

1 (5) Actions of service provider receiving subpoena.
2 Upon receipt of the issued subpoena, either
3 accompanying or subsequent to the receipt of a
4 notification described in subsection (c)(3)(A), the service
5 provider shall expeditiously disclose to the copyright
6 owner or person authorized by the copyright owner the
7 information required by the subpoena, notwithstanding
8 any other provision of law and regardless of whether the
9 service provider responds to the notification.

10 (6) Rules applicable to subpoena. Unless otherwise
11 provided by this section or by applicable rules of the
12 court, the procedure for issuance and delivery of the
13 subpoena, and the remedies for noncompliance with the
14 subpoena, shall be governed to the greatest extent
15 practicable by those provisions of the Federal Rules of
16 Civil Procedure governing the issuance, service, and
17 enforcement of a subpoena duces tecum.

18 II.


19 REQUEST FOR SUBPOENA DUCES TECUM

20 Applicant Maximized Living, Inc. satisfies each of the requirements of 17
21 U.S.C. 512(h) as follows:

- 22 1. A true and correct copy of Applicant's notice to Respondent under the
23 Digital Millennium Copyright Act (17 U.S.C. § 512(c)(3)(A)) is hereby
24 attached as Exhibit B.
- 25 2. The form of the proposed subpoena to Respondent is hereby attached as
26 Exhibit A.
- 27 3. A sworn declaration to the effect that the purpose for which the subpoena is
28 sought is to obtain the identity of an alleged infringer and that such
information will only be used for the purpose of protecting rights under this
title is hereby attached as Exhibit C.

1 WHEREFORE, for the aforementioned reasons, Applicant Maximized
2 Living, Inc. requests the Clerk of this Court to issue a Subpoena to Respondent
3 Google, Inc. in the form attached as Exhibit A.

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5 Dated: March 22, 2011



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7 Robert C. Weems
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UNITED STATES DISTRICT COURT
for the
Northern District of California

MAXIMIZED LIVING, INC.
Plaintiff
v.
Google, Inc.
Defendant
Civil Action No. Miscellaneous
(If the action is pending in another district, state where:
U.S.C. Section 512 (h)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES

To: Google, Inc. 1600 Amphitheatre Parkway, Mountain View, CA 94043

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: All documents and electronically stored information reflecting the identity of the person or persons who posted content at http://maximizedlivingbodybygod.blogspot.com/2009/05/maximized-living-scripts.html, including but not limited to their name, email address, IP address, street address, and telephone number.

Place: Weems Law Offices
769 Center Boulevard, PMB 38
Fairfax, CA 94930
Date and Time: 04/01/2011 00:00

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)
, who issues or requests this subpoena, are:

EXH A.

Civil Action No. Miscellaneous

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because _____ ; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____ _____
Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

HUTCHERSON LAW

10000 North Central Expressway, Suite 800, Dallas, Texas 75231
(214) 443-4200 (voice) (214) 443-4210 (fax)
Writer's E-Mail: kjh@hutchersonlaw.com

March 3, 2011

VIA CERTIFIED MAIL RRR NO. 7008 3230 0002 9475 0705
AND EMAIL (DMCA-AGENT@GOOGLE.COM)

Shantal Rands Poovala
Google, Inc.
Consumer Products Legal Support
1600 Amphitheatre Parkway
Mountain View, California 94043

Re: Digital Millennium Copyright Act Notice (17 U.S.C. § 512(c))

Dear Ms. Poovala:

Our law firm represents Maximized Living, Inc.. Pursuant to 17 U.S.C. § 512(c), we hereby provide you with written notice of infringement of copyrights belonging to Maximized Living, Inc.

As you know, the Digital Millennium Copyright Act requires the following elements for a notification of claimed infringement:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

EXH. B

Shantal Rands Poovala

March 3, 2011

Page 2

- (iv) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- (v) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.¹

We hereby satisfy each of these elements. First, as you can see from the attached Affidavit of Dr. Ben Lerner, Owner of Maximized Living, Inc., Dr. Ben Lerner is authorized to act on behalf of Maximized Living, Inc. of its exclusive copyrights that have been infringed. Dr. Lerner's signature appears at the bottom of his affidavit.

Second, Maximized Living, Inc.'s copyrights in the text that appears as Exhibit A to Dr. Lerner's affidavit is being infringed. This content is part of a script created by Maximized Living, Inc. for use in its daily business. Maximized Living, Inc. created (through Dr. Lerner and Dr. Greg Loman) and owns this content.

Third, the infringing content appears at the following webpage: <http://maximizedlivingbodybygod.blogspot.com/2009/05/maximized-living-scripts.html>.

Fourth, Maximized Living, Inc. has a good faith belief that use of the material in the manner complained of is not authorized by Maximized Living, Inc., its agent, or the law. Thus, the continued publication of Maximized Living, Inc.'s content on these domains without its authorization constitutes a clear case of copyright infringement.

Fifth, as further detailed in the Affidavit of Dr. Ben Lerner, Dr. Lerner has stated, under penalty of perjury, that the information provided in his affidavit and this letter is accurate and that he is authorized to act on Maximized Living, Inc.'s behalf of its exclusive rights in its copyrights and content.

Accordingly, we hereby requests that you act expeditiously to remove, or disable access to, the above-identified infringing material.

¹ 17 U.S.C. § 512(c)(3)(A).


HUTCHERSON LAW

Shantal Rands Poovala
March 3, 2011
Page 3

If you would like to discuss this matter further, please feel free to contact me at the following:

Kenton J. Hutcherson, Esq.
Hutcherson Law
10000 North Central Expressway, Suite 800
Dallas, Texas 75231
Email: kjh@hutchersonlaw.com
Tel: (214) 443-4201
Fax: (214) 443-4210

Sincerely,

By: 

Kenton J. Hutcherson
Attorney for Maximized Living, Inc.

Enclosure

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE MAXIMIZED LIVING, INC.

Case No.:

Applicant,

**DECLARATION OF
DR. BEN LERNER**

vs.

GOOGLE, INC.

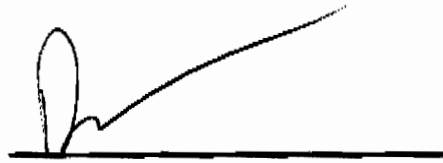
Respondent.

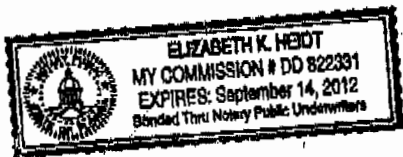
I, Ben Lerner, declare under penalty of perjury as follows:


1. My name is Dr. Ben Lerner. I am a United States Citizen, a resident of the State of Florida, am over 18 years of age, and if called to testify in Court or other proceeding I could and would give the following testimony which is based upon my own personal knowledge unless otherwise stated.
2. I am the owner of Maximized Living, Inc. I am authorized to act on Maximized Living, Inc.'s behalf to protect its exclusive rights in its copyrighted content
3. I have read the Request for Identity of Infringers Pursuant to 17 U.S.C. § 512(h) filed on behalf of Maximized Living, Inc. for a subpoena to Google, Inc.
4. The purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under title 17 of the United States Code.

1 Pursuant to 28 U.S.C., Section 1746, I declare under penalty of perjury
2 under the Laws of the United States of America that the foregoing is true
3 and correct.

4
5 Dated: March 1, 2011

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8
9
10 Ben Lerner



 3/1/2011

Subscribed and sworn to before me this 1st day
of March 2011, to certify which witness my
hand and seal of office