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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**

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<p>In re:          www.goog-money-tree.com, and www.google          moneyprofitsystem.com</p> <hr/> <p>GOOGLE, INC.</p> <p style="text-align: center;">Plaintiff</p> <p>v.</p> <p>PACIFIC WEBWORKS, INC.</p> <p style="text-align: center;">Defendant</p>	<p style="text-align: center;"><b>MEMORADUM IN SUPPORT OF          MOTION TO QUASH SUBPOENA</b></p> <p>Case No.: 2:09-CV-01068</p> <p>Judge Bruce S. Jenkins</p>
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Owner of domains www.goog-money-tree.com and www.googlemoneyprofitsystem.com (hereinafter "Domain Owner"), by and through its attorney of record, files this Memorandum in Support of Motion to Quash Subpoena pursuant to Federal Rules of Civil Procedure, Rule 45(c)(3)(i), (iii), and (iv).

## BACKGROUND

In or around 10:00 am on Friday, January 22, 2010, Domain Owner received an email from its domain registrant, godaddy.com, stating as follows:

This email is to inform you that we have received a properly formatted subpoena for documents in the following civil action: *Google Inc. v Pacific Webworks, Inc.* pending in the United States District Court for the District of Utah and issued by the United States District Court for the District of Arizona, Civil Action No. 2:09-cv-1068. Our response to this subpoena may require us to disclose some of your personally identifiable information. Therefore, we are providing this notice as a courtesy to give you an opportunity to object to the subpoena. **The only way to object to a properly filed subpoena is by filing an objection with the court in which the matter is pending. If we do not receive an objection notice within 2 business days indicating that you have filed an objection, we will continue with producing the documents requested and charge your account according to our registration agreement.**

In order to obtain further information related to the pending litigation or a copy of the subpoena, you may contact counsel for the requesting party as follows:

Katherine Keating, Esq.  
Holme Roberts & Owen, LLP  
560 Mission St., 25<sup>th</sup> Floor  
San Francisco, CA 94105  
415.268.1972 Telephone

Said email was received in duplicate, one for [www.goog-money-tree.com](http://www.goog-money-tree.com) and another for [www.googlemoneyprofitsystem.com](http://www.googlemoneyprofitsystem.com). Neither domain, nor its registration information, has anything to do with the *Google, Inc. v. Pacific Webworks Inc.* matter. In fact, [www.googlemoneyprofitsystem.com](http://www.googlemoneyprofitsystem.com) was a purchased domain that was never used by Domain Owner in any manner. Indeed, if Google, Inc. wants to have that domain, Domain Owner will simply transfer the domain to Google, Inc.

Further, Domain Owner did not receive a copy of the subpoena, nor is it being demanded to respond. GoDaddy.com received the subpoena and it carries this burden. However, because

Domain Owner is “affected by a subpoena” it too may quash the subpoena pursuant to FRCP 45(c)(3)(B)(i). GoDaddy.com did not forward a copy of the subpoena to Domain Owner, and upon request to its counsel, did not forward to Domain Owner’s Counsel. GoDaddy.com referred Domain Owner to counsel for Google, Inc. to obtain a copy of the subpoena. When counsel requested a copy of the subpoena from Counsel for Google, Inc, Katherine Keating, it received an auto-reply responder saying Ms. Keating was out of the office until Wednesday, January 27, 2010, with limited access to email. Counsel for Domain Manager requested a copy of the subpoena from an assistant to Ms. Keating who at time of filing has not responded to counsel for Domain Owner. Therefore, Domain Owner has not seen the subpoena, but is being required to have its information turned over to Google, Inc unless it responds with an objection by January 25, 2010.

**THE SUBPOENA SHOULD BE QUASHED PURSUANT TO RULE 45(c)(3)(A)(i) AS 2 DAYS IS INSUFFICIENT TIME TO RESPOND TO THE REQUEST AND DOMAIN OWNER HAS NOT SEEN THE SUBPOENA**

Rule 45(c)(3)(A)(i) does not specify what constitutes a reasonable length of time for compliance with a subpoena. However, in this instance, two (2) days is an unreasonable amount of time. Domain Owner has not seen the subpoena. Because its information is being demanded, it should have an opportunity to consider the merits of the subpoena before its information is turned over to Google, Inc.

THE SUBPOENA SHOULD BE QUASHED PURSUANT TO RULE 45(c)(3)(A)(iii)  
BECAUSE IT REQUIRES DISCLOSURE OF PRIVILEGED OR PROTECTED  
MATTER

Rule 45(c)(3)(A)(iii) provides safeguards for privileged or other protected matter from the subpoena power. Domain Owner does not know what information is being requested from Google, Inc., but it objects to the subpoena on the grounds that its information should be reviewed to see if a privilege or protection exists to safeguard the dissemination of its private information.

THE SUBPOENA SHOULD BE QUASHED PURSUANT TO RULE 45(c)(3)(A)(iv)  
BECAUSE IT PLACES AN UNDUE BURDEN ON DOMAIN OWNER

Rule 45(c)(3)(A)(iv) requires the court to quash a subpoena deemed to impose an undue burden or expense to anyone subject to the subpoena. Here, Domain Owner is required to pay the attorney's fees and costs of GoDaddy.com to respond to the unseen subpoena and for a matter in which it has no interest. Domain Owner should not be required to finance Google's action against Pacific Webworks, Inc.

CONCLUSION

For the reasons set out above, the subpoena's filed against Owner of domains www.goog-money-tree.com and www.googlemoneyprofitsystem.com should be quashed.

DATED this 25th day of January, 2010.

s/ Blair R. Jackson  
Blair R. Jackson  
Attorney for Domain Owner

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY OR FACSIMILE  
TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

Blaine J Benard  
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Salt Lake City, Utah 84111

Mail  
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 Electronic Delivery

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GoDaddy.Com  
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Compliance Manager  
480-624-2546 Facsimile

Mail  
 Facsimile  
 Electronic Delivery

DATED this 25th day of January, 2010

s/ Blair R. Jackson  
Blair R. Jackson