

1 RENNER OTTO
MARK C. JOHNSON (ADMITTED PRO HAC VICE)
2 mjohnson@rennerotto.com
KYLE B. FLEMING (BAR NO. 166386)
3 kfleming@rennerotto.com
1621 Euclid Avenue, Floor 19
4 Cleveland, Ohio 44115
T: 216.621.1113
5 F: 216.621.6165

6 COUNSEL FOR DEFENDANTS MERCHSOURCE LLC
AND THREESIXTY BRANDS GROUP LLC
7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 DODOCASE VR, INC.,

11 Plaintiff,

12 v.

13 MERCHSOURCE, LLC, et al.,

14 Defendants.
15

Case No. 3:17-cv-07088-EDL

**NOTICE OF SUBPOENA TO
GOOGLE, INC.**

16 TO: Google, Inc., c/o Corporation Service Company, 2710 Gateway Oaks Drive,
17 Suite 150N Sacramento, CA 95833.

18 Please take notice that MerchSource, LLC (“MerchSource”), pursuant to Rules 34 and
19 45 of the Federal Rules of Civil Procedure, requests Google, Inc. to produce and permit
20 inspection and copying at National Court Reporting and Video, 5201 Great America Pkwy,
21 Santa Clara, CA 95054 on May 17, 2018 at 12:00 pm PDT, or at such other place and time as
22 counsel may agree, the documents and things set forth in Attachment A. Please contact Mark
23 Johnson at (216) 736-3170 to discuss alternatives to the noticed time and place of production.

24 Any production marked “Confidential” or “Attorney’s Eyes Only” will be afforded no
25 less protection than is set forth in the attached Protective Order.

26 Please take further notice that MerchSource, pursuant to Rule 30 of the Federal Rules
27 of Civil Procedure, will take the deposition upon oral examination of Google, Inc.
28 commencing at National Court Reporting and Video, 5201 Great America Pkwy, Santa Clara,
Notice of Subpoena to Google, Inc.

1 CA 95054 on May 23, 2018 at 1:30 pm PDT, or at such other place and time as counsel may
2 agree. MerchSource requests that Google produce one or more witnesses knowledgeable
3 regarding the topics set forth in Attachment B to testify at the place and time specified in the
4 attached subpoena. The deposition will be taken before a notary or other person authorized
5 to administer oaths and take testimony.

6 Please contact Mark Johnson at (216) 736-3170 to discuss alternatives to the noticed
7 time and place of deposition, of if you have any questions or concerns.

8 Counsel for DODOCASE VR, Inc. is invited to attend and examine the witness.

9
10 Dated: April 27, 2018

RENNER OTTO

11 /s/ Mark C. Johnson
12 Mark C. Johnson

13 COUNSEL FOR DEFENDANTS
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2018, the foregoing SUBPOENA IN A CIVIL CASE and NOTICE OF SUBPOENA TO GOOGLE, INC., including the attachments thereto, has been served by initiating personal service of the same upon:

Google, Inc.
c/o Corporation Service Company
2710 Gateway Oaks Drive
Suite 150N
Sacramento, CA 9583395

I further certify that on April 27, 2018 a true and correct copy of the foregoing SUBPOENA IN A CIVIL CASE and NOTICE OF SUBPOENA TO GOOGLE, INC., including the attachments thereto, is being served by email as agreed upon by the parties to:

Timothy J. Haller
HALLER LAW PLLC
53 West Jackson Boulevard, Suite 1623
Chicago, IL 60604
haller@haller-iplaw.com

Gabriel I. Opatken
NOBLE IP LLC
418 North Noble Street, Suite 4
Chicago, IL 60642
gabriel@nobleipllc.com

Marc Libarle
LAW OFFICES OF MARC LIBARLE
1388 Sutter Street, Suite 910
San Francisco, CA 94109
ml7006@gmail.com

Attorneys for DODOcase VR, Inc.

/s/ Mark C. Johnson
Mark C. Johnson

ATTACHMENT A

MerchSource's requests for documents and things shall be responded to in accordance with the following Definitions and Instructions:

DEFINITIONS

A. "Agreement" means any agreement, contract, license, memorandum of understanding, agreement in principle, understanding, ratification, authorization, arrangement, and/or dealing whether oral or in writing.

B. "Action" means DODOCASE VR, INC. v. MerchSource, LLC et al., Civil Action No. 3:17-cv-07088-EDL, United States District Court for the Northern District of California.

C. "And" means and/or. The term "or" means and/or. The terms "all" and "each" shall be construed as all and each. The plural of any word used herein includes the singular and the singular includes the plural; likewise, the disjunctive includes the conjunctive, and vice versa. Each gender of any word includes the other genders. The use of any tense of any verb shall be considered to include within its meaning all of the tenses of the verb so used.

D. "Any" shall be understood in either its most or least inclusive sense as will bring within the scope of discovery requests all responses that might otherwise be construed to be out of its scope.

E. "Communication" means any exchange or transmission of words or ideas to another person or an entity, including without limitation conversations, discussions, letters, correspondence, memoranda, meetings, notes, speeches, cable, facsimile, telex, telephone call, electronic mail message, or other transfer of information, whether written, oral, or by any other means, whether direct or indirect, formal or informal, and includes any document which abstracts, digests, transcribes or records any such communication.

1 F. “Defendants” means and collectively refers to MerchSource, LLC and
2 ThreeSixty Brands Group LLC, and any defendant later added to the Action in a subsequent
3 pleading.

4 G. “Discussion” means an assembly, congregation, encounter, meeting or
5 conversation between or among two or more individuals for any purpose, whether planned,
6 arranged or scheduled in advance, and include, without limitation, all oral communications,
7 whether or not in person, by telephone, or otherwise, between two or more individuals.

8 H. “Document” shall have the broadest meaning ascribed to it by Rule 34(a) of
9 the Federal Rules of Civil Procedure, including without limitation all handwritten, typed,
10 printed, graphic, digital, and/or computer-stored matter such as correspondence,
11 memoranda, notes, desk calendars, logs, drafts, work papers, blueprints, drawings or
12 sketches, minutes or recordings of meetings, speeches, presentations, conversations or
13 telephone calls (whether recorded in writing, mechanically or electronically), records, studies,
14 analyses, reports, forecasts, schedules, surveys, invoices, receipts, check stubs, CD-ROM,
15 computer data, any retrievable data, computer printouts, financial statements, balance sheets,
16 profit and loss statements, statements of earnings, statements of net worth, credit reports,
17 statements of operations, audit reports, financial summaries, statements of lists or assets,
18 figures, statistics, agreements, government filings, inquires, reports, contracts, expense
19 reports, photographs, slides, videos, communications (including without limitation electronic
20 mail and web site information), and information or statistics contained on any memory device
21 or other information storage and retrieval systems (whether stored, encoded, taped, or coded
22 electrostatically, electromagnetically, optically, digitally, or otherwise). “Document” also
23 means an authentic copy where the original is not in Velcro’s possession, custody or control
24 and every copy of a document where the copy is not an identical duplicate of the original.

25 I. “Dodocase” means Dodocase, Inc. DODOcase VR, Inc., including without
26 limitation any divisions, departments, parents, predecessors, successors, subsidiaries, affiliates,
27 and other organizational or operating units, and present or former officers, directors,
28

employees, or agents, and all persons purporting to act on their behalf. For avoidance of doubt, “Dodocase” specifically includes Patrick Regan Buckley, Craig Dalton and Gene Daly.

J. “Employee(s)” means any director, trustee, officer, employee, agent, consultant, partner, corporate parent, subsidiary, affiliate, or servant of the designated entity, whether active or retired, full-time or part-time, current or former, and compensated or not.

K. “Entity” means legal or business entity of any kind and includes, without limitation, corporations, partnerships, trusts, associations and organizations, or any other form of business or any legal, governmental, or business unit.

L. “Patents-in-suit” means U.S. Patent Nos. 9,420,075 (“’075 Patent”); 9,723,117 (“’117 Patent”); and 9,811,184 (“’184 Patent”), and any other patent, including patents yet to be issued, claiming priority from the ’075 patent.

M. “Person” means any natural person or legal entity.

N. “Prior Art” means any means all documents, information, acts, or things that would qualify as prior art under any subsection of 35 U.S.C. §§ 102 and 103 assuming the earliest priority date for the claims of the asserted patents is May 14, 2015, including all systems, methods, apparatus, publications, patents, or uses.

O. “Relate,” “refer,” “reflect,” “concern,” and “pertain” mean discussing, evidencing, mentioning, memorializing, describing, constituting, containing, analyzing, studying, reporting on, commenting on, recommending, concerning, reflecting, summarizing, referring to, pertaining to, supporting, refuting, and/or purporting to evidence, mention, memorialize, describe, constitute, contain, concern, reflect, summarize, refer to, support, refute, and/or in any way be relevant to, in whole or in part.

P. “Things” means all physical items that are not considered documents and shall have the broadest interpretation of that term in Rule 34 of the Federal Rules of Civil Procedure.

Q. “VR device” means any virtual reality device product, including but not limited to the Google Cardboard line of products, that is adapted to receive a mobile device, such as

1 a mobile phone, and provide a virtual reality experience using the display of the received
2 mobile device.

3 R. “You,” “your” and “Google” means Google, Inc. and Google LLC, including
4 without limitation any divisions, departments, parents, predecessors, successors, subsidiaries,
5 affiliates, and other organizational or operating units, and present or former officers,
6 directors, employees, or agents, and all persons purporting to act on their behalf.

8 INSTRUCTIONS

9 A. These requests seek all documents, objects, or other tangible things described
10 in the categories below which are in your possession, custody, or control.

11 B. Unless otherwise noted, these requests require production of documents or
12 things that were prepared, created, written, sent, dated, or received at any time up to the
13 present.

14 C. These requests are intended to be construed as permitted pursuant to the
15 Federal Rules of Civil Procedure. They are to be construed independently, except when such
16 broadest construction limits their scope. Any ambiguity should be resolved by selecting the
17 broadest construction possible within the scope of the Federal Rules.

18 D. These requests are continuing. In the event any responsive information or
19 materials come to your attention or are created after the serving of responses, produce such
20 information or materials as soon as possible.

21 E. If you object to fully identifying a document, electronically stored information
22 or oral communications because of a privilege or immunity, provide the following
23 information unless divulging the information would disclose privileged information:

- 24 1. Identify the nature of the privilege claimed (including work product);
- 25 2. If the privilege is being asserted in connection with a claim or defense
26 governed by state law, identify the state law privilege rule being invoked;
- 27 3. If a document, identify the type of document (e.g., letter or

28 memorandum); if electronically stored information, identify the software application

1 used to create it (e.g., MS Word, MS Excel Spreadsheet); and identify:

- 2 a. the general subject matter of the document or electronically
3 stored information,
4 b. the date of the document or electronically stored information,
5 and
6 c. the custodian, location, and such other information sufficient to
7 identify the material for a subpoena *duces tecum* or a production request,
8 including where appropriate the author, addressee, and any other recipient of
9 the document or electronically stored information, and, where not apparent,
10 the relationship of the author, addressee, and any other recipient to each other;
11 and

12 4. If an oral communication, identify:

- 13 a. the name of the person making the communication and the
14 names of persons present while the communication was made and, where not
15 apparent, the relationship of the persons present to the person making the
16 communication,
17 b. the date and the place of communication, and
18 c. the general subject matter of the communication.

19 F. If any responsive document has been lost or destroyed, identify: (i) the author;
20 (ii) the date of loss or destruction; (iii) the reason for loss or destruction; (iv) the identity of
21 those directing the destruction, if any; and (v) the substance of the document.

22 G. If any request or term is ambiguous or unclear to you, please contact Mark
23 Johnson at mjohnson@rennerotto.com as soon as possible so the request can be clarified, so
24 as to avoid unnecessary delay in discovery.

25 H. Produce all documents which exist or have been maintained in electronic form
26 in the electronic media required to be accessed and read by appropriate electronic equipment,
27 or, if necessary, written identification of the electronic equipment or software needed to
28 access the electronic data.

I. The following requests are subject to any and all present or future agreements by the parties or orders from the Court regarding limitations on electronic discovery.

REQUESTS

1. All communications between you and Dodocase between January 1, 2014 and July 16, 2015.

2. All communications between you and Dodocase relating to Cardboard V1 or Cardboard V2.

3. All communications between you and Dodocase relating to any VR device.

4. All communications between you and Dodocase relating to any of the patents-in-suit.

5. All documents relating to any of the patents-in-suit.

6. All documents relating to any royalties requested by Dodocase or paid by Google to Dodocase.

7. All documents relating to any past or present relationship between you and Dodocase.

8. All documents relating to the inclusion of reference to Dodocase in Google's presentation at its 2014 I/O Cardboard presentation (see, e.g., <https://www.youtube.com/watch?v=DFog2gMnm44> at approximately 3:00 – 4:00).

9. All documents relating to any patent license, or potential patent license, involving a patent directed to a mechanical feature of a VR device.

10. All documents relating to patents obtained by Google for any technology embodied in Google Cardboard V1 or Google Cardboard V2.

11. Documents sufficient to show what, if any, technologies embodied in Google Cardboard V1 or Google Cardboard V2 are proprietary to Google.

12. Documents sufficient to show what, if any, technologies embodied in Google Cardboard V1 or Google Cardboard V2 are open source.

1 13. Documents sufficient to show the number of units of Google Cardboard V2
2 sold by Google.

3 14. All documents relating to prior art, as defined above, to the patents-in-suit.

4 15. All documents relating to mechanical features of VR devices in existence prior
5 to May 14, 2015 where such VR devices included an outer structure, but lacked any element
6 inside the outer structure that is moveable to contact a touchscreen of a mobile device. An
7 example of such an element is the central moveable mechanism in the Google Cardboard V2
8 VR device.

9 16. All documents relating to mechanical features of VR devices in existence prior
10 to May 14, 2015 where such VR devices included an outer structure and also included an
11 element within the outer structure that is moveable to contact a touchscreen of a mobile
12 device. An example of such an element is the central moveable mechanism in the Google
13 Cardboard V2 VR device.

ATTACHMENT B

MerchSource incorporates the Definitions and Instructions set forth in Attachment A.

TOPICS FOR EXAMINATION

1. Communications between you and Dodocase between January 1, 2014 and July 16, 2015.
2. Communications between you and Dodocase relating to Cardboard V1 or Cardboard V2.
3. Communications between you and Dodocase relating to any VR device.
4. Communications between you and Dodocase relating to any of the patents-in-suit.
5. The patents-in-suit.
6. Any royalties requested by Dodocase or paid by Google to Dodocase.
7. Any past or present relationship between you and Dodocase.
8. The facts and circumstances surrounding the inclusion of reference to Dodocase in Google's presentation at its 2014 I/O Cardboard presentation (see, e.g., <https://www.youtube.com/watch?v=DFog2gMnm44> at 3:00 – 4:00).
9. Any patent license, or potential patent license, involving a patent directed to a mechanical feature of a VR device.
10. Patents obtained by Google for any technology embodied in Google Cardboard V1 or Google Cardboard V2.
11. The technologies of Google Cardboard V1 or Google Cardboard V2, and whether they are proprietary to Google or open source.
12. The sales of Google Cardboard by Google and/or third parties working with Google.
13. Prior art, as defined above, to the patents-in-suit.
14. The mechanical features of VR devices in existence prior to May 14, 2015 where such VR devices included an outer structure, but lacked any element within the outer

1 structure that is moveable to contact a touchscreen of a mobile device. An example of such
2 an element is the central moveable mechanism in the Google Cardboard V2 VR device.

3 15. The mechanical features of VR devices in existence prior to May 14, 2015
4 where such VR devices included an outer structure and also included an element within the
5 outer structure that is moveable to contact a touchscreen of a mobile device. An example of
6 such an element is the central moveable mechanism in the Google Cardboard V2 VR device.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28