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9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11 PERFECT 10, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 GOOGLE INC., a corporation; and
16 DOES 1 through 100, inclusive,

17 Defendants.

18 _____
19 AND CONSOLIDATED CASE

Master Case No.: 04-9484 AHM (SHx)

DECLARATION OF DR. NORMAN
ZADA IN SUPPORT OF MOTION OF
PLAINTIFF PERFECT 10, INC. FOR
ORDER GRANTING LEAVE TO FILE
SECOND AMENDED COMPLAINT

[NOTICE OF MOTION AND
MOTION; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JEFFREY N.
MAUSNER IN SUPPORT THEREOF;
[PROPOSED] SECOND AMENDED
COMPLAINT; AND [PROPOSED]
ORDER SUBMITTED
CONCURRENTLY HEREWITH]

Date: July 7, 2008
Time: 10:00 a.m.
Place: Courtroom 14, Courtroom of the
Honorable A. Howard Matz

Discovery Cut-Off Date: None Set
Pretrial Conference Date: None Set
Trial Date: None Set

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I, Norman Zada, declare as follows:

1. I am the President of Plaintiff Perfect 10, Inc. (“Perfect 10”). I have been very involved in the prosecution of this case and am very familiar with all aspects of it. All of the matters stated in this declaration are of my own personal knowledge, except where otherwise stated, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of Perfect 10’s motion for leave to file a Second Amended Complaint.

2. All of the documents attached as exhibits to this declaration are true and correct copies of documents that I printed or saved – either by downloading the documents from the Internet using Adobe 6.0 Professional and then printing them, or by archiving copies of my computer screen using the program “snagit,” converting them to Adobe, and then printing the documents. All of the exhibits attached to this declaration contain the correct date the document was viewed and saved/printed, and the Uniform Resource Locator (URL) address of the webpage that was viewed and saved/printed.

3. Attached as Exhibit 1 are the results of a “who is” search on the website URLs blogspot.com and blogger.com that I performed on April 29, 2008. These documents show that blogspot.com and blogger.com are both registered to Defendant Google, Inc., that Google is the administrative and technical contact for both websites, and that the domain servers for both websites belong to Google.

4. Attached as Exhibit 2 is a document entitled “Blogger Terms of Service,” which I printed from the website blogger.com on April 29, 2008. Paragraph 1 of the document, titled “Description of Service,” states that “Blogger is a web publishing service and optional hosting service (the ‘Service’),” and that “Google also reserves the right to modify, suspend or discontinue the Service with or without notice at any time and without any liability to you.” Paragraph 6 of the document, found on page 3 of the exhibit, states that “By submitting, posting or

1 displaying Content on or through Google services which are intended to be
2 available to the members of the public, you grant Google a worldwide, non-
3 exclusive, royalty-free license to reproduce, publish and distribute such Content on
4 Google services for the purpose of displaying and distributing Google services.”
5 Paragraph 10 of the document, found on page 4 of the exhibit, states that “[i]n the
6 event of termination, your account will be disabled and you may not be granted
7 access to your account or any files or other content contained in your account
8 although residual copies of information may remain in our system for some time
9 for back-up purposes.”

10 5. Google is much more involved with the infringing websites that it
11 hosts and for which it stores full-size images, than typical hosting companies.
12 Hosting companies normally just provide power, bandwidth, and technical support.
13 Google actually has the HTML code for the website on its own servers, and for
14 websites in its blogger.com program, has the full-size images on Google servers as
15 well. Google frequently places Google ads on the websites that it hosts. When I
16 have attempted to determine the registered owner of a Google hosted site like
17 mafiadacova.blogspot.com, I have either gotten an error message, or a statement
18 that Google is the registered owner of blogspot.com.

19 6. When Perfect 10 filed its motion for preliminary injunction against
20 Google, I was not aware that the domain names blogspot.com and blogger.com
21 were owned and controlled by Google. I also was not aware that Google was
22 allowing websites that infringed Perfect 10 copyrights to place their infringing
23 websites on Google servers, and was partnering with those websites to sell
24 advertising. Nor was I aware that Google was storing *millions of full-size images*
25 on its servers in connection with its blogspot and blogger programs, including
26 thousands of full-size Perfect 10 copyrighted images. I only discovered these
27 matters while our appeal was pending at the Ninth Circuit.

28

1 7. Attached as Exhibit 3 are examples of Google’s display of
2 “thumbnails” of Perfect 10 copyrighted images that Google in-line links to larger
3 images stored on Google’s own servers. The first page of Exhibit 3 is a print
4 screen of the results of a Google Image Search for Perfect 10 model Caneel
5 Carswell that I performed on April 28, 2008. Below the four images of Caneel
6 Carswell on the right side of the first row of images are the URLs
7 “ostracomacucar.blogspot.com,” “jornalmax.blogspot.com,” “a-
8 rosa.blogspot.com,” and “mafiadacova.blogspot.com.” These are websites that all
9 have blogspot.com as part of their domain name, which means that they are all
10 hosted on Google servers. I obtained page 2 of Exhibit 3 by clicking on the image
11 of Caneel Carswell above the term “mafiadacova.blogspot.com” on page 1 of
12 Exhibit 3, and scrolling through the website mafiadacova.blogspot.com until I
13 came to Perfect 10 copyrighted images of Caneel Carswell. I obtained pages 3, 4,
14 and 5 of Exhibit 3 by clicking on the images of Caneel Carswell on the website
15 mafiadacova.blogspot.com and downloading the resulting larger images. I
16 obtained pages 6 and 7 of Exhibit 3 by clicking on images on the websites a-
17 rosa.blogspot.com and ostracomacucar.blogspot.com, respectively. All of the five
18 larger images on pages 3 through 7 of Exhibit 3 have blogger.com in their URL,
19 indicating that these images are all stored on Google’s servers. For the
20 convenience of the Court, I have placed checkmarks by the term blogger.com in
21 the URLs on these pages. In other words, the four “thumbnail” images in the
22 upper right of page 1 of Exhibit 3 are all in-line linked to pages on websites hosted
23 by Google, and the large images on those pages are all stored on servers registered
24 to and controlled by Google.

25 8. Exhibit 4 shows that Google was storing full-size Perfect 10
26 copyrighted images on its servers in 2005, when Perfect 10 filed its motion for
27 preliminary injunction. At that time, however, Perfect 10 was not aware of the
28 connection between blogger.com and Google. Page 1 of Exhibit 4 is a copy of an

1 exhibit taken from Perfect 10's motion for preliminary injunction, a copyrighted
2 image of Perfect 10 model Natalia Sirocka which I print-screened in 2005. As may
3 be seen by a review of the first page of Exhibit 4, the reduced-size image at the top
4 of the page has a URL in green next to it which includes blogger.com. Page 2 of
5 Exhibit 4 is the same image of Natalia Sirocka, which I print-screened from the
6 website lingieredreams.blogspot.com on April 30, 2008. As may be seen by a
7 review of this page, Google is still hosting the same infringing image of Natalia
8 Sirocka, with Google ads next to it, on lingieredreams.blogspot.com. Page 3 of
9 Exhibit 4 is a larger Perfect 10 copyrighted image of Natalia Sirocka, which I also
10 print-screened on April 30, 2008. This image has blogger.com in its URL,
11 indicating that it is still stored on Google's servers. In total, in its 2005 exhibits in
12 support of its motion for preliminary injunction, Perfect 10 submitted twenty
13 images that were part of infringing websites hosted by Google, specifically, [babe-](http://babe-thegoose.blogspot.com)
14 thegoose.blogspot.com and sexyasspics.blogspot.com (ER G300, 941),
15 truthliesandcommonsense.blogspot.com (ER G304, 944), kmls.blogspot.com (ER
16 G311, 951), fu-qtoo.blogspot.com (ER G820-21, 1036-37), photos1.blogger.com
17 (ER G828, 1044), and snarkybastard.blogspot.com (ER G829, 1045), without
18 realizing that these websites were hosted on Google's servers. For the convenience
19 of the court, I have included those exhibits in Exhibit 9, an attached disk, in a
20 folder labeled "Images from PI motion."

21 9. Perfect 10 has discovered over the last year that Google is hosting
22 hundreds of infringing websites that infringe, in total, tens of thousands of Perfect
23 10 copyrighted images, and that Google is storing *thousands* of full-size Perfect 10
24 copyrighted images on its servers. Attached as Exhibit 5 is a sample of 50 such
25 images. The Perfect 10 copyrighted images that Google stores on its servers are
26 among Perfect 10's most valuable images, as they typically involve some of
27 Perfect 10's most famous and/or attractive models. Pages 1-14 of Exhibit 5 are
28 infringing full-size copies of Perfect 10 copyrighted images of Marisa Miller.

1 Marisa Miller is a Victoria Secret's model and is the cover model for the 2008
2 Sports Illustrated swimsuit issue. She recently received the number one spot on
3 Maxim magazine's "Hot 100" rankings for 2008. The first seven of these images
4 of Marisa Miller display Perfect 10 copyright notices and/or note that they come
5 from Perfect 10. Pages 15-20 of Exhibit 5 are full-size images of Vibe Sorenson, a
6 famous Norwegian model, known in part for her relationship with magician David
7 Copperfield. Similar images were attached to Perfect 10's motion for preliminary
8 injunction at ER G927-928 and are included in a folder labeled "images from PI
9 motion" on the disk submitted as Exhibit 9 (discussed in Paragraph 14, below).
10 Pages 21-28 of Exhibit 5 are full-size images of Monika Zsibrita, a Perfect 10
11 model known in part for her involvement with comedian Chris Rock. Similar
12 images were attached to Perfect 10's motion for preliminary injunction at ER
13 G622, 631, 932, 942, 943, 1032, and 1111, and have been placed in the folder
14 labeled "images from PI motion" on the disk that is Exhibit 9. Pages 29-32 of
15 Exhibit 5 are full-size images of Isabelle Funaro, a Madison Model of the Year.
16 Pages 33-36 of Exhibit 5 are full-size images of Irina Voronina, a successful
17 working model who appeared in the movie "Reno 911" and is a regular on the
18 cartoon show, "Saul and the Mole Men." Pages 37-42 are images of Zita Gorog
19 (also known as Zita Gorocs), a famous Hungarian actress who appeared in the
20 movie "Underworld," and is the host of the weekly TV series "Cinematix." Pages
21 43-50 are images of Anu Pekkari, a beauty queen from Finland.

22 10. Many of the websites hosted by Google that display infringing Perfect
23 10 images also offer the ability to download thousands of additional Perfect 10
24 images, as well as billions of dollars in pirated full length movies and songs. I
25 have included several examples of such websites in Exhibit 6. Page 1 of Exhibit 6
26 contains an infringing Perfect 10 "thumbnail" at the top of the page, and frames a
27 medium size infringing Perfect 10 copyrighted image from the Google hosted
28 website metartphoto.blogspot.com in the middle of the page. By right clicking on

1 that image, I have verified that that image is stored on Google’s servers. Below
2 that image, I have checked a link entitled “Click Here to Download.” That link
3 allowed me to download all 39 Perfect 10 copyrighted images in that set, from the
4 web site rapidshare.com. Rapidshare.com is a Google AdSense affiliate which
5 offers billions of dollars of pirated movies, songs, and at least 17,000 Perfect 10
6 copyrighted images for download, for less than the cost of a membership to
7 perfect10.com. Page 2 of Exhibit 6 contains another infringing Perfect 10
8 “thumbnail” at the top of the page, and frames a medium size infringing Perfect 10
9 copyrighted image of Paulina from the Google hosted web site
10 saladadecevada.blogspot.com in the middle of the page. I have verified that that
11 image is stored on Google’s servers, as the checked URL at the bottom of the page
12 indicates. Near the top of the framed page, I have checked an offer by the Google
13 hosted website saladadecevada.blogspot.com to provide the user with “Rapidshare
14 Direct Links.” I have used those links to download the 23 images of Paulina
15 offered on page 2 of Exhibit 6. Page 3 of Exhibit 6 is a print-screen that I made
16 from the Google-hosted website moviedownloadstation.blogspot.com on May 1,
17 2008, which shows that website promoting the downloading of the movie “The
18 Heartbreak Kid” using rapidshare.com. At the right of the page is the heading,
19 “Download latest movie,” below which are listed numerous movies in alphabetical
20 order, including “Alien vs. Predator 2,” and “American Gangster.” Perfect 10 has
21 complained to Google about rapidshare.com since 2005, and has sent to Google at
22 least 5,000 Perfect 10 copyrighted images offered for download by rapidshare.com,
23 to no avail.

24 11. Google hosts thousands of websites that both infringe copyright
25 directly and also offer Google users the ability to download massive quantities of
26 infringing materials similar to the ones shown on pages 1-3 of Exhibit 6. Page 4
27 of Exhibit 6 shows the results of a combination Google Web Search that I
28 performed on April 30, 2008 for “site:blogspot.com rapidshare.com.” Based on

1 my familiarity with Google, this search should restrict the Google search results to
2 websites that Google hosts via its blogspot.com hosting program which have
3 rapidshare.com in their description. At the upper right of the page, it states:
4 “Results 1-100 of about 439,000 from blogspot.com for rapidshare.com.” This
5 suggests that there may be as many as **439,000** Google-hosted websites that offer
6 billions of dollars in pirated full-length movies, songs, and images.

7 12. Attached as Exhibit 7 is a page showing the results of a combination
8 Google Web Search that I performed on April 30, 2008 for “site:blogspot.com
9 perfect10.com passwords.” Exhibit 7 shows that Google is hosting websites that
10 are offering unauthorized passwords to perfect10.com, including the websites
11 hackedxxxpasswords.blogspot.com, xhackedxxxpasswordsx.blogspot.com,
12 freewebcam000000.blogspot.com, and yourlibe92s.blogspot.com.

13 13. Attached as Exhibit 8 is the first page of a combination Google Image
14 Search that I performed on April 28, 2008 for “blogger.com ‘Paris Hilton.’” At the
15 upper right of the page, it states: “Results 1-18 of about 591,000.” This suggests
16 that, as of April 28, 2008, Google may have had as many as 591,000 medium to
17 full-size images of Paris Hilton or related to Paris Hilton on its servers.

18 14. Submitted separately as Exhibit 9 is a disk consisting of five folders.
19 In the folder labeled “Blogger Full-Size Images,” I have included approximately
20 1,000 full-size images of Victoria’s Secret and Sports Illustrated supermodel
21 Adriana Lima, which I have downloaded from Google’s servers. In the process of
22 finding these images, I noticed that Google is hosting thousands of infringing
23 websites that, in total, infringe millions of full-size images of major celebrities, and
24 that Google is storing millions of full-size images of such celebrities on its servers.

25 15. Many of the websites that Google hosts, and from which Google
26 copies and stores full-size images of celebrities and Perfect 10 models, openly
27 admit that they do not own the rights to their content. I have included a folder
28 labeled “Disclaimers” in Exhibit 9, which includes more than 50 examples of such

1 disclaimers on Google hosted blogspot.com websites. Most of these websites also
2 display Google ads. An example of such a disclaimer, from the Google hosted
3 website hollywoodpictures.blogspot.com, which displays Google ads next to
4 images of Angelina Jolie, states: “All images and text are thought to be public
5 domain and found through various sources on the internet and publications.” The
6 disclaimer for semiwalls.blogspot.com states: “We don’t own content available
7 here. Pictures published here have been gathered from various other sites from all
8 over the net and are believed to be public domain.” The disclaimer for Julia-
9 aquino.blogspot.com states: “We claim no credit for any images or videos featured
10 on this site unless otherwise noted. All visual content is copyright to it’s respectful
11 owners.”

12 16. In or about March, 2007, Google substantially changed its Image
13 Search results on Perfect 10 model names to include many additional results that
14 have nothing to do with those models, and in many cases, defame them. For
15 example, before March, 2007, a Google Image Search on Perfect 10 model Talia
16 Harvalik at times returned nine images, all of which were of Talia Harvalik. The
17 same Google Image Search, which I performed on April 29, 2008, returned 457
18 images, most of which have nothing to do with Talia Harvalik and some of which
19 falsely portray her to be involved in explicit sexual acts. I have included those
20 results in Exhibit 9 in a folder labeled “Talia Harvalik Image Search.” The folder
21 includes: 1) 13 infringing Perfect 10 images of Talia Harvalik; 2) nine infringing
22 Perfect 10 copyrighted images of Perfect 10 models other than Talia Harvalik; 3)
23 three images of dogs or horses having sex with humans other than Talia Harvalik
24 (although one cannot tell that from the images); 4) 24 extremely explicit images
25 that do not involve Talia Harvalik; and 5) about 400 other images, most of which
26 are infringing and which link primarily to websites that infringe Perfect 10
27 copyrights and either are, or were, Google AdSense affiliates. In the folder in
28 Exhibit 9 entitled “P10 Image Searches,” I have included 20 additional pages of

1 Google Image Searches on Perfect 10 model names that show animal sex and other
2 extremely explicit images of persons who are not Perfect 10 models, mixed in with
3 actual images of Perfect 10 models. It would be easy for a Google user to
4 incorrectly conclude that Perfect 10 models were involved in these disgusting acts.

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct to the best of my knowledge.

7 Executed on June 12, 2008, at Los Angeles, California.

8 

9 _____
10 Norman Zada, Ph.D.