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 7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

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

12 Plaintiff,

13 v.

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

16 Defendants.

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

DISCOVERY MOTION

DECLARATION OF JEFFREY N.
 MAUSNER IN OPPOSITION TO
 GOOGLE'S MOTION TO COMPEL
 FURTHER ANSWERS TO
 INTERROGATORIES

Date: September 8, 2008

Time: 2 P.M.

Place: Courtroom of Judge Hillman

Discovery Cut-Off Date: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

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 18 AND CONSOLIDATED CASE

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Jeffrey Mausner

From: Jeffrey Mausner [jeffmausner@bmlaw.com]
Sent: Thursday, July 24, 2008 7:44 PM
To: 'Rachel M Herrick'
Cc: 'Jansen, Mark T. '; 'Malutta, Anthony J.'; 'Besmer, Veronica'; 'Thomas Nolan'; 'Michael T Zeller'
Subject: RE: Google's Joint Stipulation on Interrogatories 3 & 11

Obviously I disagree with you. And your statements that Perfect 10 has been dodging its discovery obligations, has not provided basic discovery, or has served entirely deficient responses are just plain false. Jeff.

From: Rachel M Herrick [mailto:rachelherrick@quinnemanuel.com]
Sent: Thursday, July 24, 2008 9:08 AM
To: 'Jeff Mausner'
Cc: 'Jansen, Mark T. '; 'Malutta, Anthony J.'; 'Besmer, Veronica'; Thomas Nolan; Michael T Zeller
Subject: RE: Google's Joint Stipulation on Interrogatories 3 & 11

Jeff,

Your suggestion is counterintuitive and incorrect for a host of reasons. The parties can and will present similar issues to the court at the same time, so that the court may efficiently resolve those issues rather than addressing them seriatim. Perfect 10 has been dodging its discovery obligations for years now, and it's time to tee that up for Judge Hillman's disposition. As for your comment regarding duplicative work, Perfect 10 has elected to file two lawsuits against two different entities, and has refused to provide either entity with the basic discovery those entities are entitled to. Any resulting duplicative work is the direct result of Perfect 10's own conduct. Lastly, this is not a re-litigation. First, Judge Hillman did not deny Google's prior motion -- he deferred it for resolution at a later time. Moreover, since the prior hearing on Google's first motion to compel in February 2006, Perfect 10 has served supplemental (and entirely deficient) responses, and Google has served an additional related interrogatory (No. 11). Neither of these subjects has been ruled upon by Judge Hillman. You will be receiving our Joint Stipulation in due course.

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From: Jeff Mausner [mailto:jeffmausner@bmlaw.com]
Sent: Wednesday, July 23, 2008 11:38 PM
To: Rachel M Herrick
Cc: 'Jansen, Mark T. '; 'Malutta, Anthony J.'; 'Besmer, Veronica'; Thomas Nolan; Michael T Zeller
Subject: RE: Google's Joint Stipulation on Interrogatories 3 & 11

Rachel: It does not make sense for Google and Amazon to schedule their motions for a concurrent hearing. Google should await the outcome of the hearing on Amazon's motion prior to filing a motion.

Judge Hillman already ruled that an interrogatory request made by Google that is very similar to the interrogatory requests made by Amazon was an impermissible mega request. Perfect 10 informed Amazon of the same prior to Amazon bringing a motion to compel regarding its interrogatory requests and asked Amazon not to bring the motion on that basis. However, Amazon brought the motion anyway and Judge Hillman indicated that the interrogatory requests made by Amazon were impermissible, and, *inter alia*, directed Amazon to craft new interrogatories. Amazon did not do so and instead is persisting in scheduling a second hearing on its motion regarding its original interrogatory requests.

If Google brings its motion concurrently it will require the court and Perfect 10 to engage in duplicative work for the third time. You state in your e-mail that "I understand that Amazon has filed a similar motion to compel regarding similar interrogatories it served on Perfect 10 Since Google's motion concerns very similar interrogatories and raises very similar issues, we think it makes sense to have both motions heard by Judge Hillman at the same time."

This is precisely why the motions should not be heard concurrently. As you know, Judge Matz has directed the parties not to keep relitigating the same issues. Therefore, Google should not bring its contemplated discovery motion until Judge Hillman hears and rules on Amazon's discovery motion. Amazon is more than capable of aptly briefing the very similar issues about very similar interrogatories. If Google files its motion prior to Magistrate Judge Hillman making final rulings on the Amazon motion, Perfect 10 will request sanctions.

It is clear that the defendants are working together to inundate me with busy work so that Perfect 10 cannot litigate the merits of these cases. Jeff.

From: Rachel M Herrick [mailto:rachelherrick@quinnemanuel.com]
Sent: Wednesday, July 23, 2008 6:11 PM
To: Jeffrey Mausner
Cc: 'Jansen, Mark T. '; 'Malutta, Anthony J.'; 'Besmer, Veronica'; Thomas Nolan; Michael T Zeller
Subject: RE: Google's Joint Stipulation on Interrogatories 3 & 11

Jeff,

Obviously if you and Amazon are able to work out your differences, then there would be no need for a call -- but if not, and if a call with Hillman takes place, I would like to be included.

As for the Joint Stipulation, I am aware of your vacation plans and will not send you a Joint Stip requiring a written response during your vacation time. I cannot, however, put Google's motion on hold because Perfect 10 is taking a few depositions the week of August 5. You have a team of at least three lawyers, and Perfect 10 has already prepared its portions of the Amazon Joint Stipulation regarding nearly identical issues. Perfect 10's burden to cut and paste its argument from the Amazon Joint Stipulation into the Google Joint Stipulation will be minimal at best.

Thanks,

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From: Jeffrey Mausner [mailto:jeffmausner@bmlaw.com]
Sent: Wednesday, July 23, 2008 6:05 PM
To: Rachel M Herrick
Cc: 'Jansen, Mark T. '; 'Malutta, Anthony J.'; 'Besmer, Veronica'; Thomas Nolan; Michael T Zeller
Subject: RE: Google's Joint Stipulation on Interrogatories 3 & 11

I am not aware of a phone call with Judge Hillman tomorrow. We will be having a meet and confer tomorrow with Mark Jansen and Veronica Besmer, but Judge Hillman will not be participating in that call as far as I know. Mark and Veronica, can we make it at 3 PM instead of 2? I will be getting the letter we discussed to you shortly.

I do want to let you all know again that I will not be available from July 29 to August 5, and then have depositions scheduled the rest of the week of August 5. So please do not schedule anything during those time periods, do not send a Joint Stipulation that needs to be worked on during those time periods, and do not schedule a motion that needs to be opposed during those time periods. Thanks, Jeff.

From: Rachel M Herrick [mailto:rachelherrick@quinnemanuel.com]
Sent: Wednesday, July 23, 2008 5:39 PM
To: Jeffrey Mausner
Cc: Jansen, Mark T. ; Malutta, Anthony J.; Besmer, Veronica; Thomas Nolan; Michael T Zeller
Subject: Google's Joint Stipulation on Interrogatories 3 & 11

Hi Jeff,

In follow up to the parties' meet and confer efforts re Google's Interrogatories 3 and 11 (which concluded several weeks ago), I wanted to let you know that we will be sending you Google's portion of its Joint Stipulation shortly. I understand that Amazon has filed a similar motion to compel regarding similar interrogatories it served on Perfect 10, and that you and Mark may be speaking with Judge Hillman tomorrow to set a hearing date on Amazon's motion. Since Google's motion concerns very similar interrogatories and raises very similar issues, we think it makes sense to have both motions heard by Judge Hillman at the same time. Accordingly, I wanted to let you know that I will be participating in the call to Judge Hillman tomorrow, for the limited purpose of informing Judge Hillman of Google's pending motion, and requesting/setting a joint hearing date.

Thanks,

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