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8 Attorneys for Plaintiff PERFECT 10, INC.

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 Defendant(s).

Case No. CV 04-9484 [Consolidated with
 Case No. CV 05-4753 AHM (SHx)]

**PERFECT 10'S COURT ORDERED
 LIST RE (1) PENDING DISCOVERY
 MOTIONS, (2) DISCOVERY
 MOTIONS THAT ARE
 CURRENTLY CONTEMPLATED
 AND (3) DISCOVERY DISPUTES
 THAT ARE REASONABLY LIKELY
 TO ARISE WITHIN THE NEXT
 NINE MONTHS**

Hon. Howard A. Matz
 Courtroom: 14

Hon. Stephen J. Hillman
 Courtroom: 550

Discovery Cutoff: None Set
 Pretrial Conference Date: None Set
 Trial Date: None Set

25 AND CONSOLIDATED CASES

1 **PERFECT 10'S REPORT REGARDING DISCOVERY MOTIONS IN THE**
2 **GOOGLE CASE**

3 Perfect 10 respectfully submits the following summary of pending,
4 contemplated, and likely discovery motions, ordered by the Court on August 20.

5 **1. PENDING DISCOVERY MOTIONS:** None filed by Perfect 10.

6 **2. DISCOVERY MOTIONS THAT ARE CURRENTLY**

7 **CONTEMPLATED:** At this time, Perfect 10 does not intend to file any discovery
8 motions. Perfect 10 has determined that discovery motions against Google have been
9 largely futile, because Google has simply disobeyed Court orders, most recently, this
10 Court's important May 13, 2008 discovery order. For that reason, Perfect 10 is not
11 currently planning on filing any further discovery motions at this time. At trial, or
12 when Perfect 10 files its anticipated motions for summary judgment, Perfect 10 may
13 seek to preclude Google from introducing evidence regarding the defenses that
14 Google would not provide discovery on, and possibly other matters.

15 **3. DISCOVERY DISPUTES THAT ARE REASONABLY LIKELY TO**
16 **ARISE WITHIN THE NEXT NINE MONTHS**

17 Perfect 10 believes that Google and Amazon have attempted to wrongly
18 characterize Perfect 10 as not providing full discovery, when Perfect 10 has produced
19 virtually every document it has (including its tax returns), in an attempt to avoid
20 unnecessary discovery motions. Because defendants cannot file motions based on
21 Perfect 10's lack of production (it has already produced nearly 600 Gigabytes of
22 documents), defendants now are attempting to claim that Perfect 10's form of
23 production was improper, or that Perfect 10 should be ordered to convert its massive
24 production into a different format, TIFF.

25 Perfect 10 believes that Adobe PDF productions are clearly superior to TIFF,
26 as Adobe files are text searchable, have Adobe generated page numbers based on the
27 order in which the pages were created, and maintain the link structure between those
28

1 pages¹. Converting an Adobe document to a TIFF document simply separates the
2 Adobe document into separate pages and removes the link structure and page
3 numbers in the original document, thereby removing critical information. The
4 Federal Rules of Civil Procedure, Rule 34(b)(2)(E), in section (i), specifically states
5 that “A party must produce documents as they are kept in the usual course of business
6 or must organize and label them to correspond to the categories in the request.”
7 Perfect 10 produced its documents “as they are kept in the usual course of business,”
8 in electronic format, in logically arranged files, sub-files, etc. FRCP 34(b)(2)(E)(iii)
9 specifically provides that: “A party need not produce the same electronically stored
10 information in more than one form.”

11 Defendants are also attempting to use Perfect 10’s complete production against
12 it, by seeking to compel Perfect 10 to answer interrogatories which require that
13 Perfect 10 go through its 2,000,000 plus page production, and make a spreadsheet
14 with millions of entries detailing every infringement on every webpage.

15 **4. PERFECT 10 IS WORKING ON REDUCING THE LIKELIHOOD OF** 16 **FUTURE MOTIONS BY DEFENDANTS**

17 Perfect 10 understands that it needs to prove its case, and is working on a
18 copyright registration/image spreadsheet that will provide, for each of Perfect 10’s
19 approximately 30,000 copyrighted images, *the earliest registration covering that*
20 *image* (not all registrations as defendants seek, and not all 1.2 million infringed
21 copies as defendants seek). Perfect 10 is also working on providing, *for a*
22 *representative collection of infringing websites*, an excel spreadsheet listing the
23 number of infringed images per model, as well as one, or possibly more, DMCA
24 notices covering those images (not all 3000+ infringing websites, and not all 100
25 DMCA notices, as defendants seek). Perfect 10 is hopeful that the excel spreadsheets

26
27 ¹ There may be a few situations where the conversion was performed using a different
28 version of Adobe where this is not the case, but it is the case for the vast
preponderance of documents produced by Perfect 10.

1 that it is currently working on will reduce the number of future motions by
2 defendants.

3 **5. APPOINTMENT OF TECHNICAL ADVISOR**

4 Perfect 10 believes that the appointment of a technical advisor could help in
5 minimizing disputes, such as over the relative advantages/disadvantages of TIFF
6 productions over Adobe productions and other technical issues.

7 Dated: August 29, 2008

LAW OFFICES OF JEFFREY N. MAUSNER

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By: Jeffrey N. Mausner
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