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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California
corporation,

14 Plaintiff,

15 vs.

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

18 Defendants.

19 AND COUNTERCLAIM

20 PERFECT 10, INC., a California
21 corporation,

22 Plaintiff,

23 vs.

24 AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation; and
25 DOES 1 through 100, inclusive,

26 Defendants.

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

DECLARATION OF RACHEL M.
HERRICK IN SUPPORT OF
DEFENDANT GOOGLE'S MOTION
TO DETERMINE THE SUFFICIENCY
OF PLAINTIFF PERFECT 10'S
RESPONSES TO GOOGLE'S
REQUESTS FOR ADMISSION, SETS
1 AND 2

Hon. Stephen J. Hillman

Courtroom.: 550
Hearing Date: November 17, 2008
Hearing Time: 2:00 pm

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

1 I, Rachel M. Herrick, declare as follows:

2 1. I am a member of the bar of the State of California and an attorney
3 with Quinn Emanuel Urquhart Oliver & Hedges, LLP, counsel for Defendant
4 Google Inc. ("Google") in this action. I make this declaration of my personal and
5 firsthand knowledge and, if called and sworn as a witness, could and would
6 competently testify thereto.

7 2. Attached as Exhibit A is a true and correct copy of Defendant Google's
8 First Set of Requests for Admission to Plaintiff Perfect 10, Inc. served April 3, 2008.

9 3. Attached as Exhibit B is a true and correct copy of Perfect 10, Inc.'s
10 Responses to Defendant Google's First Set of Requests for Admission to Plaintiff
11 Perfect 10, Inc. served May 5, 2008.

12 4. Attached as Exhibit C is a true and correct copy of Defendant Google's
13 Second Set of Requests for Admission to Plaintiff Perfect 10, Inc. served May 29,
14 2008.

15 5. Attached as Exhibit D is a true and correct copy of Perfect 10, Inc.'s
16 Responses to Defendant Google's Second Set of Requests for Admission to Plaintiff
17 Perfect 10, Inc. served June 27, 2008.

18 6. Attached as Exhibit E is a true and correct copy of a letter I sent to
19 Perfect 10's counsel dated May 23, 2008, identifying the deficiencies in Perfect 10's
20 Responses to Google's First Set of Requests for Admission.

21 7. Attached as Exhibit F is a true and correct copy of a letter I sent to
22 Perfect 10's counsel dated August 8, 2008, identifying the deficiencies in Perfect
23 10's Responses to Google's Second Set of Requests for Admission.

24 8. Attached as Exhibit G is a true and correct copy of a letter I sent to
25 Perfect 10's counsel dated September 11, 2008, reiterating my request for a response
26 to my prior letters dated May 23 and August 8, 2008.

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1 9. On September 17 and 26, 2008, counsel for Google and Perfect 10
2 conferred by telephone regarding Google's objections to the insufficiency of Perfect
3 10's Responses to Google's Requests for Admission (Set Two). During the
4 September 26 call, Perfect 10's counsel offered to provide responses to only 150 of
5 the 478 Requests in Google's Second Set of Requests which Perfect 10 initially had
6 refused to substantively answer, effectively asking Google to withdraw the
7 remaining 328 Requests. Google's counsel declined Perfect 10's offer, on the basis
8 that Federal Rule of Civil Procedure 36 requires Perfect 10 to respond to all of
9 Google's Requests. On October 7, Perfect 10's counsel stated via email that it
10 would amend "certain" of its responses to Google's Requests, but none of those for
11 which it did not provide a substantive response, and did not identify which
12 responses it would amend. On October 13, 2008, counsel for Google and Perfect 10
13 conferred again by telephone regarding these same issues.

14 10. On October 16, 2008, Perfect 10's counsel emailed me to provide
15 Perfect 10's final position that it would not agree to amend even a single one of its
16 objectionable responses to Google's Second Set of Requests for Admission.

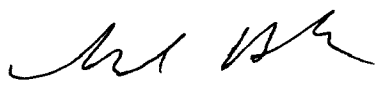
17 11. On October 13, 2008, Perfect 10's counsel finally agreed to meet and
18 confer regarding Perfect 10's responses to Google's Requests for Admission (Set
19 One). Perfect 10's counsel stated that Perfect 10 would amend "certain" of its
20 responses, but refused to identify which ones. Google's counsel asked Perfect 10 to
21 identify which responses it would amend by October 16 and the date by which it
22 would amend them. As of the date of this declaration, Perfect 10 has not identified
23 any responses it will amend, how it will amend them, or when it will amend them.

24 12. Attached as Exhibit H is a true and correct copy of excerpts of the
25 transcript of the Status Conference held before Judge Matz on October 6, 2008.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed October 27, 2008 at Redwood Shores, California.



Rachel M. Herrick