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9 Attorneys for Defendant Google Inc.

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California
14 corporation,

Plaintiff,

15 vs.

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

18 Defendants.

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

DECLARATION OF RACHEL
HERRICK KASSABIAN
IN SUPPORT OF DEFENDANT
GOOGLE'S MOTIONS FOR
SUMMARY JUDGMENT RE:
GOOGLE'S ENTITLEMENT TO
SAFE HARBOR UNDER 17 U.S.C.
§ 512

19 AND COUNTERCLAIM

Hon. A. Howard Matz

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

Plaintiff,

22 vs.

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

26 Defendants.

Date: August 17, 2009
Time: 10:00 a.m.
Ctrm: 14

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

PUBLIC REDACTED

1 I, Rachel Herrick Kassabian, 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 chart which summarizes, for the court's
8 convenience, the deficiencies in each of Perfect 10's claimed DMCA notices.

9 3. Attached as Exhibit B is a true and correct copy of excerpts of the Joint
10 Stipulation Re: Google's Motion to Determine the Sufficiency of Perfect 10's
11 Responses to Google's Requests for Admission, Docket No. 372, filed October 27,
12 2008.

13 4. Attached as Exhibit C is a true and correct copy of excerpts from the
14 Congressional Record of the Senate Proceedings and Debates of the 105th Congress,
15 Second Session, dated Thursday May 14, 1998, regarding the then-pending
16 legislation that became the Digital Millennium Copyright Act ("DMCA"), obtained
17 from Westlaw.

18 5. Attached as Exhibit D is a true and correct copy of excerpts of the
19 Congressional Record of the House of Representatives Proceedings and Debates of
20 the 105th Congress, Second Session, dated Thursday August 4, 1998, regarding the
21 then-pending legislation that became the DMCA, obtained from Westlaw.

22 6. Attached as Exhibit E is a true and correct copy of excerpts of the 105th
23 Congress, Second Session House of Representatives Report 105-551 (Part 2) dated
24 July 22, 1998, regarding the then-pending legislation that became the DMCA.

25 7. Attached as Exhibit F is a true and correct copy of the portion of the
26 DMCA codified at 17 U.S.C. § 512, obtained from Westlaw.

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1 8. Attached as Exhibit G is a true and correct copy of excerpts of Perfect
2 10's Responses to Google's First Set of Requests for Admission, served May 5,
3 2008.

4 9. Attached as Exhibit H is a true and correct copy of excerpts of the
5 Declaration of Norman Zada in Support of Perfect 10's Opposition to A9.com's
6 Motion for Summary Judgment, Docket No. 146, filed in the related action
7 denominated *Perfect 10, Inc. v. Amazon.com, Inc., et al.* on September 14, 2008.

8 10. Attached as Exhibit I is a true and correct copy of excerpts of Perfect
9 10's Response to Google's Second Set of Requests for Admission, served June 27,
10 2008.

11 11. Attached as Exhibit J is a true and correct copy of two email chains
12 between Perfect 10 and its vendor Contributor Corporation, produced by Contributor
13 Corporation in response to a subpoena issued in this action.

14 12. Attached as Exhibit K is a true and correct copy of printed excerpts of
15 Exhibit 9 to the Declaration of Norman Zada in Support of Perfect 10's Motion for
16 Summary Judgment Against Alexa and Amazon, Docket No. 177, filed in the
17 related action denominated *Perfect 10, Inc. v. Amazon.com, Inc., et al.* In his
18 Declaration, Norman Zada described Exhibit 9 as "true and correct copies of image
19 recognition reports generated by Contributor, Inc., a company hired by Perfect 10 to
20 locate its images using image recognition."

21 13. Attached as Exhibit L is a true and correct copy of documents produced
22 by Plaintiff Perfect 10, Inc. ("Perfect 10") to Google in the course of discovery in
23 this action. Included in Exhibit L are e-mail communications from Perfect 10 to
24 Google dated May 11, 2001 (Exhibit L1), May 15, 2001 (Exhibits L2, L3 and L4),
25 May 18, 2001 (Exhibits L5, L6 and L7), May 21, 2001 (Exhibits L8, L9 and L10),
26 May 22, 2001 (Exhibits L11, L12 and L13), May 24, 2001 (Exhibit L14), June 26,
27 2001 (Exhibit L15), June 29, 2001 (Exhibit L16) and July 6, 2001 (Exhibit L17).

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1 For the purposes of Google's motion, the communications in Exhibit L are referred
2 to as the "Group A Notices."

3 14. Google has yet to receive complete discovery establishing Perfect 10's
4 alleged ownership of all of the images at issue in this lawsuit, such as complete
5 records of all copyright registration and deposits materials, and materials
6 documenting the chain of title for the images Perfect 10 allegedly commissioned or
7 purchased from third parties.

8 I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct. Executed July 1, 2009 at Redwood
10 Shores, California.

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14 Rachel Herrick Kassabian

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