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9 Attorneys for Plaintiff Perfect 10, Inc.

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

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

14 Plaintiff,

15 v.

16 GOOGLE, INC., a corporation,

17 Defendant.

18 AND CONSOLIDATED CASE.

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

**PERFECT 10'S STATEMENT OF
 UNCONTROVERTED FACTS AND
 CONCLUSIONS OF LAW, FOR
 MOTION FOR SUMMARY
 JUDGMENT AND SUMMARY
 ADJUDICATION AGAINST
 GOOGLE, INC.**

BEFORE JUDGE A. HOWARD MATZ

Date: August 17, 2009
 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

1 Perfect 10 submits the following Statement of Uncontroverted Facts and
 2 Conclusions of Law, in support of its Motion for Summary Judgment and Summary
 3 Adjudication against Defendant Google, Inc. (“Google”).
 4

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
I. PERFECT 10’S COPYRIGHTS	
5 6 7 1. Perfect 10 owns valid, registered copyrights 8 for the images in the sample for which it seeks 9 summary judgment in this motion (“The 10 Sample”). 11 12 13 14 15 16 17 18 19 20	Declaration of Jeffrey N. Mausner in Support Of Perfect 10’s Motion for Summary Judgment and Summary Adjudication Against Google (“Mausner Decl.”) ¶9; Declaration of Melanie Poblete in Support Of Perfect 10’s Motion for Summary Judgment and Summary Adjudication Against Google (“Poblete Decl.”); Declaration of Norman Zada In Support Of Perfect 10’s Motion For Summary Judgment and Summary Adjudication Against Google (“Zada Decl.”) ¶2, Exh. 9. <i>Perfect 10 v. Google, Inc.</i> , 416 F.Supp.2d 828, 832 (C.D.Cal. 2006), <i>aff’d in part and reversed in part on other grounds, Perfect 10, Inc. v. Google.com, Inc.</i> , 508 F.3d 1146 (9 th Cir. 2007).
II. GOOGLE’S ACTIONS	
21 22 2. Google owns the domain name blogger.com.	Zada Decl. ¶9, Exh. 2.
23 3. Google owns the domain name 24 blogspot.com.	Zada Decl. ¶9, Exh. 2.
25 4. Google has hosted websites that display 26 Perfect 10 copyrighted images (“P10 Images”).	Zada Decl. ¶12, Exh. 5.
27 5. Google has hosted websites that display 28 Perfect 10 copyrighted images and have google ads next to those images.	Zada Decl. ¶12, Exh. 5.

1	6. Google has hosted the website	Zada Decl. ¶12, Exh. 5.
2	alltolls.blogspot.com, which displays P10	
3	copyrighted images.	
4	7. Google has placed ads next to P10 Images on	Zada Decl. ¶12, Exh. 5.
5	the website alltolls.blogspot.com.	
6	8. Google has earned revenues from clicks on	Zada Decl. ¶12, Exh. 5.
7	ads placed next to P10 Images on the website	
8	alltolls.blogspot.com.	
9	9. Google stores full-size Perfect 10	Zada Decl. ¶¶9, 41-51, Exhs. 2,
10	copyrighted images on blogger.com servers,	28-35, 9.
11	which are registered to Google.	
12	10. Google has allowed its ads to appear next to	Zada Decl. ¶¶13, 58, Exhs. 6, 43,
13	thousands of Perfect 10 copyrighted images.	9.
14	11. Google has not asked Perfect 10 for	Zada Decl. ¶12.
15	permission, nor has it offered to pay Perfect 10	
16	anything for the commercial use of Perfect 10's	
17	copyrighted works.	
18	12. Google has allowed its ads to appear next to	Zada Decl. ¶¶13, 58, Exhs. 6, 43,
19	thousands of P10 Images on the web site	9.
20	imagerise.com	
21	13. Google has allowed its ads to appear on	Zada Decl. ¶¶12-13, 58, Exhs. 5-
22	websites that have infringed at least 18,000 P10	6, 43, 9.
23	Images.	
24	14. Google has earned revenue from clicks on	Zada Decl. ¶¶13, 58, Exhs. 6, 43,
25	ads placed next to thousands of Perfect 10	9.
26	copyrighted images.	
27	15. Google has made "thumbnails" from full-	Zada Decl. Exh. 40, page 3.
28	size Perfect 10 copyrighted images.	
	16. Google has linked P10 "thumbnails" to	Zada Decl. ¶28, Exh. 17.
	infringing web pages that contain full-size P10	
	Images.	
	17. Google has placed thousands of Google ads	Zada Decl. ¶49.
	next to images of celebrities without permission	
	from either the celebrity or the copyright holder.	

1	18. Google has stored tens of thousands of full-size images on its blogger.com servers.	Zada Decl. ¶49.
2		
3	19. The website imagerise.com has been a Google AdSense affiliate.	Zada Decl. ¶13, Exh. 6.
4		
5	20. The website imagevenue.com has been a Google AdSense affiliate.	Zada Decl. ¶13, Exh. 6.
6		
7	21. The website rapidshare.com has been a Google AdSense affiliate.	Zada Decl. ¶14, Exh. 7
8		
9	22. Google has powered the rapidshare1.com search engine.	Zada Decl. ¶14, Exh. 7.
10		
11	23. Google has hosted websites that display passwords to perfect10.com.	Zada Decl. ¶12, Exh. 5.
12		
13	24. Google has displayed passwords to perfect10.com in its search results.	Zada Decl. ¶65, Exh. 49.
14	III. DIRECT INFRINGEMENT BY THIRD-PARTIES	
15	25. Third-party websites have infringed Perfect 10's copyrights.	Zada Decl. ¶¶28, 56-61 Exhs. 17, 41-45. <i>Perfect 10 v. Google, Inc.</i> , 416 F.Supp.2d 828, 852 (C.D.Cal. 2006), <i>aff'd in part and reversed in part on other grounds, Perfect 10, Inc. v. Google.com, Inc.</i> , 508 F.3d 1146, 1170 (9 th Cir. 2007).
16		
17		
18		
19	IV. GOOGLE'S FAILURE TO PRODUCE A DMCA LOG	
20	26. Despite being ordered to do so, Google has not produced a "DMCA log," meaning "a spreadsheet-type document summarizing DMCA notices received, the identity of the notifying party and the accused infringer, and the actions (if any) taken in response."	Order of Judge Matz dated May 13, 2008, Docket No. 294, page 5 lines 1-9, attached as Exh. F to Mausner Decl.; Zada Decl. ¶19.
21		
22		
23		
24	V. GOOGLE'S KNOWLEDGE AND FAILURE TO ACT EXPEDITIOUSLY OR AT ALL	
25	Google Did Not Respond To Perfect10's Notices Sent In 2001	
26		
27	27. In May of 2001, Perfect 10 sent to Google a notice which complained of infringements on	Zada Decl. ¶16, Exh. 8.
28		

1	the web page <i>http://www.celebritypictures.com/MayaRubin/maya1.htm</i> .	
2		
3	28. On September 10, 2004, Google was linking to that infringing web page in its Web Search results.	Zada Decl. ¶16, Exh. 8.
4		
5	29. On June 27, 2001, Google sent Perfect 10 an email which stated, "Without administrator cooperation we cannot exclude material available on the Internet from our index."	Zada Decl. ¶17, Exh. 10.
6		
7		
8	The above statement was not correct.	
9	30. Google did not remove or disable access to any infringing material identified by Perfect 10 in its 2001 notices of infringement.	Zada Decl. ¶17, Exh. 10.
10		
11	31. In response to a Court order to produce all of the notices of infringement it received in 2001, Google produced only one document, one of Perfect 10's notices.	Zada Decl. ¶19.
12		
13		
14	32. Google links to web pages both from its Web Search results and from its Image Search results.	Zada Decl. ¶28, Exh. 17.
15		
16	Google Did Not Respond To Perfect 10's Notices Sent In May And June Of 2004, For Approximately Four Months	
17		
18	33a) Perfect 10 sent to Google a notice of infringement on May 31, 2004.	Zada Decl. ¶26, Exh. 14.
19		
20	33b) Perfect 10 sent to Google a notice of infringement on June 4, 2004.	Zada Decl. ¶26, Exh. 14.
21		
22	33c) Google could have removed infringing links identified by Perfect 10 within a week of receiving notice.	Zada Decl. ¶26, Exh. 14.
23		
24	33d) Google did not remove any links in response to Perfect 10's notices until at least October 10, 2004.	Zada Decl. ¶26, Exh. 14.
25		
26	34. In June of 2004, Google sent Perfect 10 instructions for making DMCA notices.	Zada Decl. ¶23, Exh. 12
27		
28		

1	35. Those instructions did not mention image URLs.	Zada Decl. ¶23, Exh. 12.
2		
3	36. Those instructions did not mention Google Image Search.	Zada Decl. ¶23, Exh. 12.
4		
5	37. Those instructions did not state that the URL could not have elipses (...) in it.	Zada Decl. ¶23, Exh. 12.
6		
7	38. Those instructions did not state that a different procedure was necessary for Google Image Search results.	Zada Decl. ¶23, Exh. 12.
8		
9	39. In the instructions that Google provided to Perfect 10 in June of 2004, Google stated that Perfect 10 needed to provide “(a) the search query that you used, and (b) the URL for each allegedly infringing search result. Note that the URL for each search result appears in green at the end of the description for that search result.”	Zada Decl. ¶23, Exh. 12.
10		
11		
12		
13	40. Google did not ask that Perfect 10 add a starting http:// to the beginning of the URL it provided to Google.	Zada Decl. ¶23, Exh. 12.
14		
15	41. The URL that Google provides in green at the end of the description for each Google Web Search result typically does not begin with a starting http://.	Zada Decl. Exh. 8, page 5.
16		
17		
18	42. The URL that Google requested identified an infringing web page, even though it did not typically begin with an http://. The URL that Google requested was not an image URL.	Zada Decl. ¶23, Exh. 12.
19		
20		
21	43. In the instructions that Google provided to Perfect 10, Google did not state that Perfect 10 needed to provide Google with an Image URL.	Zada Decl. ¶23, Exh. 12.
22		
23	44. If a user were to click on the URL highlighted in yellow near the top of page 3 of Exhibit 17 to the Zada Decl., they would be transported to the web page <i>http://web.tiscali.it/raskz/donne/giugno.htm</i> .	Zada Decl. Exh. 17, page 3.
24		
25		
26		
27	45. In page 3 of Exhibit 17 to the Zada Decl., Google provided a link to the web page	Zada Decl. Exh. 17, page 3.
28		

1	http://web.tiscali.it/raskz/donne/giugno.htm .	
2	46. In its Image Search results, when Google	Zada Decl. Exh. 17, page 3.
3	provides a “thumbnail,” it links that thumbnail	
4	to a web page containing a similar, but typically	
5	larger, image.	
6	47a. Google has suppressed the starting http://	Zada Decl. ¶12, Exh. 5, pages 1-
7	from links it lists in its Image Search results.	8.
8	47b. None of the links shown in pages 1-8 of	Zada Decl. ¶12, Exh. 5, pages 1-
9	Exhibit 5 to the Zada Decl. show a starting	8.
10	http://.	
11	48. If Google receives the URL of a web page,	Declaration of David O’Connor
12	it can remove any links in its Image Search	(“O’Connor Decl.”) ¶¶5-6, Exh.
13	index that match that URL.	1; Declaration of Sean
14		(“Chumura Decl.”) ¶5, Exh. 1.
15	49. In order for Google to stop linking to an	Zada Decl. Exh. 17, page 3.
16	identified web page via its Image Search results,	
17	Google must remove all thumbnails from its	
18	Image Search results that link to that web page.	
19	50. Google received notices of infringement	Zada Decl. ¶26, Exh. 14.
20	from Perfect 10.	
21	Google Did Not Remove Identified Infringing Links From Its Image Search Results	
22	51. On May 31, 2004, Perfect 10 sent Google a	Zada Decl. ¶¶26-27, Exhs. 14-
23	notice of infringement which contained the URL	15, 9.
24	http://pix.alronix.net/Photo_Scans/Tits/	
25	Monika_Zsibrita/pic00076.htm .	
26	52. Google did not remove that link from its	Zada Decl. ¶¶26-27, Exhs. 14-
27	Web Search results until at least October 10,	15, 9.
28	2004.	
29	53. Google did not remove that link from its	Zada Decl. ¶¶26-27, Exhs. 14-
30	Image Search results until at least December 12,	15, 9.
31	2005.	
32	54. Perfect 10 sent to Google a notice of	Zada Decl. ¶¶26-27, Exhs. 14-
33	infringement on May 31, 2004 which alleged	16, 9.
34	that the web page http://www.	
35	beautifulwallpaper.com/monika_zsibrita.shtml	

1	infringed Perfect 10's copyrights.	
2	55. Google did not remove a link to that web	Zada Decl. ¶¶26-27, Exhs. 14-
3	page from its Web Search results until at least	16, 9.
4	October 10, 2004.	
5	56. As of December 12, 2005, Google was	Zada Decl. ¶¶26-27, Exhs. 14-
6	continuing to link to the web page	16, 9.
7	<i>http://www.beautifulwallpaper.com/monika_zsib</i>	
8	<i>rita.shtml</i> , via its Image Search results.	
9	57. Perfect 10 sent to Google a notice of	Zada Decl. ¶¶26-28, Exhs. 14-
10	infringement on June 28, 2004 which alleged	15, 17, 9.
11	that the web page determined by the URL	
12	<i>web.tiscali.it/raskz/donne/giugno.htm</i> infringed	
13	Perfect 10's copyrights.	
14	58. Google did not remove a link to that web	Zada Decl. ¶¶26-28, Exhs. 14-
15	page from its Web Search results until at least	15, 17, 9.
16	October 10, 2004.	
17	59. As of July 9, 2006, Google was continuing	Zada Decl. ¶¶26-28, Exhs. 14-
18	to link to that infringing web page via its Image	15, 17, 9.
19	Search results.	
20	60. Perfect 10 sent to Google a notice of	Zada Decl. ¶¶24, 26-28, Exhs.
21	infringement on January 3, 2005, which alleged	13-15, 17, 9.
22	that the web page determined by the URL	
23	<i>3thehardway.nl/images/spec_gallery/</i>	
24	<i>vibe_sorenson.pages/vibe_sorenson006.html</i>	
25	infringed Perfect 10's copyrights.	
26	61. As of January 17, 2006, Google was	Zada Decl. ¶¶24, 26-28, Exhs.
27	continuing to link to that web page via its Image	13-15, 17, 9.
28	Search results.	
	62. As of July 9, 2006, Google was continuing	Zada Decl. ¶¶24, 26-28, Exhs.
	to link, via its Image Search results, to the web	13-15, 17, 9.
	page <i>http://celebritybattles.com/celeb/</i>	
	<i>Monika_Zsibrita</i> , alleged to be infringing by	
	Perfect 10 in its February 17, 2005 notice.	
	Google Did Not Expeditiously Remove	
	Identified Infringing Image URLs.	
	63a. Google received a notice from Perfect 10,	Zada Decl. ¶26, Exh. 14, page 7.
	on or about May 31, 2004, which contained the	
	URL <i>http://www.britney-spears-nude-</i>	

1	<i>pics.com/vsorensen/vsorensen_010.jpg.</i>	
2	63b. Google did not remove the image	Zada Decl. ¶26, Exh. 14, page 7.
3	determined by that image URL from its Image	
4	Search results until November 3, 2005.	
5	64. Google has received hundreds of Image	Zada Decl. ¶26, Exh. 14, page
6	URLs from Perfect 10 in Perfect 10's July 19,	28.
7	2004 notice which Google did not list in Mr.	
8	Macgillivray's sur-reply declaration and which	
9	Google did not remove for months after notice.	
10	Google Did Not Process All URLs Forwarded To It By Amazon	
11	65a) On January 21, 2005, Perfect 10 sent a	Zada Decl. ¶¶29-31, Exh. 19.
12	notice to Amazon which Amazon claimed to	
13	have forwarded to Google, on or about April 8,	
14	2005.	
15	65b) As of May 20, 2009, Google was	Zada Decl. ¶¶29-31, Exhs. 19-
16	continuing to provide links in its Web Search	20.
17	results to a number of the web pages which	
18	Perfect 10 alleged in its January 21, 2005 notice	
19	to Amazon, infringed Perfect 10's copyrights.	
20	65c) Google has not provided to Perfect 10 a	Zada Decl. ¶19.
21	spreadsheet listing which links it removed from	
22	its search results as a result of Perfect 10's	
23	notices to Amazon, or when those links were	
24	removed.	
25	Google Did Not Remove Identified Infringing Cache Links From Its Web	
26	Search Results	
27	66a) In Perfect 10's June 28, 2007 notice to	Zada Decl. ¶39, Exh. 26, page 1.
28	Google, Perfect 10 included a copy of Google's	
29	cache of the web page	
30	<i>http://www.monitor.hr/belle/0201/020108.htm,</i>	
31	which Perfect 10 alleged infringed Perfect 10's	
32	copyrights.	
33	66b) On October 28, 2008, Google was	Zada Decl. ¶39, Exh. 26, page 2.
34	continuing to directly link to that same allegedly	
35	infringing web page.	
36	66c) In Perfect 10's June 28, 2007 notice to	Zada Decl. ¶39, Exh. 26, page 3.
37	Google, Perfect 10 included a copy of Google's	
38	cache of the web page	

1	http://www.monitor.hr/belle/0112/011206.htm , which Perfect 10 alleged infringed Perfect 10's copyrights.	
2		
3	66d) On October 28, 2008, Google was continuing to directly link to that same web page.	Zada Decl. ¶39, Exh. 26, page 4.
4		
5	66e) In Perfect 10's June 28, 2007 notice to Google, Perfect 10 included a copy of Google's cache of the web page http://www.monitor.hr/belle/0208/020828.htm , which Perfect 10 alleged infringed Perfect 10's copyrights.	Zada Decl. ¶39, Exh. 26, page 5.
6		
7		
8		
9	66f) On October 28, 2008, Google was continuing to directly link to that same web page.	Zada Decl. ¶39, Exh. 26, page 6.
10		
11		
12	66g) In Perfect 10's June 28, 2007 notice to Google, Perfect 10 included a copy of Google's cache of the web page http://www.monitor.hr/belle/0205/020518.htm , which Perfect 10 alleged infringed Perfect 10's copyrights.	Zada Decl. ¶39, Exh. 26, page 7.
13		
14		
15		
16	66h) On October 28, 2008, Google was continuing to directly link to that same allegedly infringing web page.	Zada Decl. ¶39, Exh. 26, page 8.
17		
18	66i) In Perfect 10's June 28, 2007 notice to Google, Perfect 10 included a copy of Google's cache of the web page http://www.monitor.hr/belle/0405/040507.htm , which Perfect 10 alleged infringed Perfect 10's copyrights.	Zada Decl. ¶39, Exh. 26, page 9.
19		
20		
21		
22	66j) On October 28, 2008, Google was continuing to directly link to that same web page.	Zada Decl. ¶39, Exh. 26, page 10.
23		
24		
25	Google Did Not Remove Identified P10 "Thumbnails" From Its Image Search Results	
26	67a) As part of Perfect 10's January 24, 2008 notice to Google, Perfect 10 sent to Google several printouts of web pages which appear as pages 1, 3, and 5 of Exhibit 38 to the Zada Decl.	Zada Decl. ¶53, Exhs. 37, 38, pages 1, 3, 5.
27		
28		

1	Perfect 10 stated in its notice that all such	
2	images appearing on those web pages, unless	
3	they were parts of advertising banners or had	
4	red X's over them, were copyrighted by Perfect	
5	10.	
6	67b) Perfect 10 provided Google with a copy of	Zada Decl. ¶53, Exhs. 37, 38,
7	the alleged infringing thumbnails and the URLs	pages 1, 3, 5.
8	for those thumbnails.	
9	67c) Perfect 10 provided Google with enough	Zada Decl. ¶53, Exhs. 37, 38,
10	information for Google to locate the alleged	pages 1,3, 5.
11	infringing thumbnails.	
12	67d) As of October 22, 2008, Google had not	Zada Decl. ¶53, Exhs. 37, 38,
13	removed any of the alleged infringing	pages 2, 4, 6.
14	thumbnails from its Image Search results.	
15	Google Has Not Removed Identified See Full-Size Image Links	
16	68a) Perfect 10 provided to Google in its notices	Zada Decl. ¶55, Exh. 40, pages
17	copies of the two images shown as pages 1-2 of	1-2.
18	Exhibit 40 of the Zada Decl. The first image	
19	was sent in Perfect 10's July 9, 2008 notice.	
20	The second image was sent in Perfect 10's	
21	December 14, 2007 notice.	
22	68b) Perfect 10 obtained the URLs for those	Zada Decl. ¶¶54-55, Exhs. 39-
23	images by following the instructions provided	40.
24	by Google as described in Exhibit 39 to the	
25	Zada Decl.	
26	68c) As of May 19, 2009, Google had not	Zada Decl. ¶55, Exh. 40, pages
27	removed the "See full-size image" links to those	3-4.
28	images or the thumbnails corresponding to those	
	images from its Image Search results.	
	Google Has Not Stopped Directly Linking To Identified Infringing Web Pages	
	69a) As part of Perfect 10's July 9, 2008 notice	Zada Decl. ¶¶56-57, Exh. 41.
	to Google, Perfect 10 included what are attached	
	as pages 8 and 9 of Exhibit 41.	
	69b) Perfect 10 stated that all images on both of	Zada Decl. ¶¶56-57, Exh. 41.
	those pages were copyrighted by Perfect 10	
	except for the images with red X's over them.	

<p>1 69c) From the URLs shown at the bottom of 2 pages 8 and 9 of Exhibit 41, Google had enough 3 information to block any Google search result 4 from linking to those web pages.</p>	<p>Zada Decl. ¶¶23, 26, 61-63, Exhs. 12, 14, 45-47; Deposition of Derrick Pallas, Alexa’s Rule 30(b)(6) deponent (“Pallas Depo.”) 145:6-146.10; 148:23- 149:7, submitted as Exh. G to Mausner Decl. (filed under seal); O’Connor Decl. ¶¶4-6, Exh. 1; Chumura Decl. ¶¶3-5, Exh. 1.</p>
<p>7 69d) Google continued to provide search results 8 which linked to those allegedly infringing web pages as of at least March 31, 2009.</p>	<p>Zada Decl. ¶57, Exh. 42.</p>
<p>9 Google Has Failed To Respond To Notices Which Identified Infringing Images 10 On Its Servers</p>	
<p>11 70. On July 2, 2007, Perfect 10 sent to Google a 12 notice of infringement which contained P10 13 Images of Zita Gorocs (or Gorog) allegedly 14 infringed by the Google hosted website 15 <i>machpex-photo.blogspot.com</i>. Perfect 10 also included in that notice allegedly infringing images stored on the website <i>blogger.com</i> of that same model.</p>	<p>Zada Decl. ¶¶40-42, Exhs. 27- 28.</p>
<p>16 71. As of April 3, 2009, Google had not 17 removed the images referenced in the previous paragraph from its <i>blogger.com</i> servers.</p>	<p>Zada Decl. ¶43, Exh. 30.</p>
<p>18 72. The URL which is highlighted at the bottom 19 of page 1 of Exhibit 28 to the Zada Decl. is what 20 Google refers to as a “Post URL.”</p>	<p>Zada Decl. ¶41, Exh. 28.</p>
<p>21 73. On July 2, 2007, Perfect 10 sent to Google a 22 notice of infringement which contained P10 23 Images of Monika Zsibrita allegedly infringed 24 by the Google hosted website 25 <i>tabloidrabies.blogspot.com</i>. Perfect 10 also included in that notice allegedly infringing images stored on the website <i>blogger.com</i> of that same model.</p>	<p>Zada Decl. ¶44, Exh. 31.</p>
<p>26 74. As of May 4, 2009, Google had not 27 removed the images referenced in the previous 28 paragraph from its <i>blogger.com</i> servers or from the website <i>tabloidrabies.blogspot.com</i>.</p>	<p>Zada Decl. ¶45, Exh. 32.</p>

1	75. On July 2, 2007, Perfect 10 sent to Google a notice of infringement which contained P10	Zada Decl. ¶46, Exh. 33.
2	Images of Marisa Miller allegedly infringed by	
3	and stored on the website blogger.com.	
4	76. As of April 3, 2009, Google had not	Zada Decl. ¶47, Exh. 34.
5	removed the images referenced in the previous	
6	paragraph from its blogger.com servers.	
7	77. On July 2, 2007, Perfect 10 sent to Google a	Zada Decl. ¶51, Exh. 35.
8	notice of infringement which contained P10	
9	Images of Alexandra Berejnova allegedly	
10	infringed by and stored on the website	
11	blogger.com.	
12	78. As of October 27, 2008, Google was	Zada Decl. ¶51, Exh. 35.
13	continuing to store some of the same images	
14	referenced in the previous paragraph on its	
15	blogger.com servers, with slightly different	
16	URLs.	
17	79. On July 31, 2007, Perfect 10 sent to Google	Zada Decl. ¶52, Exh. 36.
18	a notice of infringement which contained P10	
19	Images of Ashley Degenford (also known as	
20	Ashley Reed) allegedly infringed by and stored	
21	on Google Groups servers.	
22	80. As of October 26, 2008, Google had not	Zada Decl. ¶52, Exh. 36.
23	removed the images referenced in the previous	
24	paragraph from its Google Group servers.	
25	Google Continues To Place Ads On Identified Infringing Web Pages	
26	81. Perfect 10 sent to Google in its March 17,	Zada Decl. ¶58, Exh. 43.
27	2008 notice, the web pages shown as pages 1	
28	and 2 of Exhibit 43 to the Zada Decl.	
29	82. As of November 29, 2008, Google was	Zada Decl. ¶58, Exh. 43, pages
30	allowing its ads to appear on those same web	4, 8.
31	pages.	
32	83. In October and November of 2008, Google	Zada Decl. ¶58, Exh. 43.
33	allowed other Google ads to appear next to	
34	identical or virtually identical images of Vibe	
35	Sorenson.	
36	84a) During the time period from March 17,	Zada Decl. ¶13, Exhs. 6, 9.
37	2008 through July 9, 2008, Perfect 10 sent to	

1	Google thousands of P10 Images in its DMCA notices which Perfect 10 alleged were infringed by the website imagerise.com.	
2		
3	84b) Many of these images displayed Perfect 10 copyright notices.	Zada Decl. ¶13, Exhs. 6, 9.
4		
5	84c) In September 2008, imagerise.com was showing Google ads next to more than 1,000 P10 Images.	Zada Decl. ¶13, Exhs. 6, 9.
6		
7	84d) Google has linked P10 thumbnails it created from infringing P10 Images offered by imagerise.com to web pages that Google hosted which contained google ads next to infringing P10 Images.	Zada Decl. ¶12, Exh. 5.
8		
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10		
11	85a) Since June 28, 2007, Perfect 10 has sent to Google thousands of P10 Images which Perfect 10 alleged were infringed by the website imagevenue.com.	Zada Decl. ¶13.
12		
13		
14	85b) Many of these images displayed Perfect 10 copyright notices.	Zada Decl. ¶13.
15		
16	85c) As of October 2008, Google was continuing to place ads on imagevenue.com and was continuing to link P10 Images to imagevenue.com in Google's Image Search results.	Zada Decl. ¶¶12-13, Exh. 5, page 5, Exh. 6, page 4.
17		
18		
19	86. Google has allowed its ads to appear on web pages of third-party websites that contain P10 Images that display Perfect 10 copyright notices, after receiving notice from Perfect 10 complaining about such unauthorized use of its images.	Zada Decl. ¶13, Exh. 6, pages 1, 2, Exh. 9.
20		
21		
22		
23	Google's Failure To Take Action in Response to Notices Regarding Massive Infringing Advertising Affiliates	
24		
25	87a) On or about December 9, 2005, Perfect 10 sent to Google a notice which alleged that the websites rapidshare.de, giganews.com, and newsdemon.com infringed Perfect 10's copyrights.	Zada Decl. ¶32, Exh. 21.
26		
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1	87b) In that notice, Perfect 10 attached examples of P10 Images which Perfect 10 alleged were infringed by those websites.	Zada Decl. ¶32, Exh. 21.
2		
3	87c) On February 12, 2006, Google was allowing rapidshare.de to display Google ads on that website.	Zada Decl. ¶14, Exh. 7, page 9.
4		
5		
6	87d) As of November 28, 2008, Google was still linking to and displaying ads for both giganews.com and newsdemon.com.	Zada Decl. ¶37, Exh. 25.
7		
8	88. Perfect 10's June 28, 2007 notice to Google contained the following language:	Zada Decl. ¶34, Exh. 22.
9	"Accompanying this notice is a hard drive which contains approximately 1,100,000 infringements of Perfect 10 copyrighted images that are offered by infringing websites from which Google accepts advertising and/or to which Google links."	
10		
11		
12		
13	89. Perfect 10's June 28, 2007 notice to Google contained the following language: "These images, when clicked on, expand to full size and in almost all cases, display a Perfect 10 copyright notice. There are cumulatively just slightly less than 801,142 images from the Usenet sites on the hard drive in the P10 subfolders that display Perfect 10 copyright notices."	Zada Decl. ¶34, Exh. 22.
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15		
16		
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19	90. Perfect 10's June 28, 2007 notice to Google included thousands of infringing images from the Google advertisers Giganews.com, UsenetBinaries.com, maximumusenet.com, NewsReader.com, NewsDemon.com, Thundernews.com, powerusenet.com, NewsRazor.net, megabitz.net, alibis.com, Ngroups.Net, diiva.com, rhinonewsgroups.com, Easynews.com, news.astraweb.com, TigerUsenet.com, supernews.com, usenet-access.com, newsgroups-download.com, newsgroup-binaries.com, and NewsHosting.com.	Zada Decl. ¶¶34-35, Exh. 22, pages 1-6, Exh. 23..
20		
21		
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24		
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26		
27	91. Perfect 10's notices from June 28, 2007 onward, identified more than 300,000 copies of	Zada Decl. ¶¶34-35, 37, Exhs. 22-23, 25.
28		

1	full-size P10 Images offered by infringing pay	
2	sites (also known as usenet sites) to which	
3	Google linked and/or had business relationships	
	(i.e., provided sponsored links).	
4	92. Perfect 10's June 28, 2007 notice to Google	Zada Decl. ¶34, Exh. 22.
5	also alleged that the pay sites that Perfect 10	
6	was complaining about stole and sold billions of	
	dollars in full-length movies and songs.	
7	93. Perfect 10 included in its June 28, 2007	Zada Decl. ¶36, Exh. 24.
8	notice to Google copies of songs sung by	
9	Christina Aguilera, Andrea Bocelli, Kelly	
10	Clarkson, Jennifer Lopez, Dixie Chicks, The	
	Beatles, Bob Dylan, Frank Sinatra, and Gwen	
	Stefani that Perfect 10 downloaded from	
	giganews.com.	
11	94. Perfect 10's June 28, 2007 notice to Google	Zada Decl. ¶34, Exh. 22.
12	included a copy of all of the images on Perfect	
13	10's website as of June of 2007.	
14	95. Google had knowledge that infringing P10	Zada Decl. ¶¶34, 37, Exhs. 22,
15	Images were available using Google's	25.
	sponsored links.	
16	96. As of November 29, 2008, Google was	Zada Decl. ¶37, Exh. 25.
17	continuing to both link to and display ads	
18	(sponsored links) for websites for which it had	
19	received notices alleging that those websites	
	infringed, in total, more than 300,000 P10	
	Images.	
20	97. On January 24, 2008, Perfect 10 sent to	Zada Decl. ¶53, Exh. 37.
21	Google a notice of infringement which	
22	contained the language, "DVD1 contains 2,546	
23	infringing Perfect 10 copyrighted images	
24	downloaded in January of 2008 from the	
	infringing websites megaerotic.com and	
	rapidshare.com."	
25	98. On July 9, 2008, Perfect 10 sent to Google a	Zada Decl. ¶56, Exh. 41.
26	notice of infringement which contained the	
27	language, "DVD1 and DVD2 together contain	
28	approximately 18,683 infringing Perfect 10	
	copyrighted images which I downloaded in	
	April, May, and June 2008 from the infringing	

1	website rapidshare.com.”	
2	99. On April 24, 2009, Perfect 10 sent to	Zada Decl. ¶14, Exh. 7, pages
3	Google a notice which contained approximately	14-16.
4	4,000 P10 Images which Perfect 10 alleged it	
5	downloaded from the website thepiratebay.org.	
6	100. As of May 4, 2009, Google was	Zada Decl. ¶14, Exh. 7, pages
7	continuing to provide thousands of links to	14-16.
8	thepiratebay.org.	
9	101. Google did not respond to notification of	Perfect 10 incorporates the
10	claimed infringement by expeditiously	supporting evidence set forth for
11	removing or disabling access to the material that	uncontroverted facts numbered
12	is claimed to be infringing or to be the subject of	27-80 and 87-100, above.
13	infringing activity.	
14	102. Google had knowledge that infringing	Perfect 10 incorporates the
15	Perfect 10 images were available using its	supporting evidence set forth for
16	search engine.	uncontroverted facts numbered
17		27-101, above.
18	VI. SIMPLE MEASURES TO PREVENT FURTHER DAMAGE TO	
19	PERFECT 10'S COPYRIGHTED WORKS WHICH GOOGLE FAILED	
20	TO TAKE	
21	103. Google has a method for removing	Zada Decl. ¶26, Exh. 14;
22	specified links from its search results.	Chumura Decl. ¶5.
23	104. Image Recognition technology is available	Zada Decl. ¶67, Exh. 51.
24	to locate infringing images.	
25	105. Google has a “similar images” feature	Zada Decl. ¶67, Exh. 51.
26	which allows users of one image to search for	
27	similar images.	
28	106. Instead of waiting three or four months or	Zada Decl. ¶26, Exh. 14.
	more to remove infringing links identified by	
	Perfect 10, Google could have removed those	
	links in a week or less.	
	107. When Google removed infringing links	Zada Decl. ¶¶26-28, Exhs. 14-
	identified by Perfect 10 from its Web Search	17.
	results, it could have also removed such links	
	from its Image Search results, but it did not do	
	so.	
	108. Google could have removed all the full-	Zada Decl. ¶¶40-51, Exhs. 27-

1	size P10 Images identified by Perfect 10 that it stored on its servers but did not do so.	35.
2		
3	109. Google could have stopped hosting websites that infringed Perfect 10 copyrights, but did not do so.	Zada Decl. ¶¶12, 41-51, Exhs. 5, 28-35.
4		
5	110. Google could have removed all the identified infringing links in the Perfect 10 notices that were forwarded to it from Amazon, but did not do so.	Zada Decl. ¶¶29-31, Exhs. 18-20.
6		
7		
8	111. Google could have removed all the identified infringing cache links in Perfect 10's notices, but did not do so.	Zada Decl. ¶39, Exh. 26.
9		
10	112. Google could have removed all the identified infringing P10 thumbnails from its Image Search results, but did not do so.	Zada Decl. ¶53, Exh. 38.
11		
12		
13	113. Google could have removed all the identified infringing "See full-size" Image links in its Image Search results, but did not.	Zada Decl. ¶55, Exh. 40.
14		
15	114. Google could have removed all the identified infringing P10 Images it stored on its servers in its Google Groups program, but did not do so.	Zada Decl. ¶52, Exh. 36.
16		
17		
18	115. Google could have stopped directly linking to identified infringing web pages, but it did not do so.	Zada Decl. ¶¶59-60, Exhs. 44, 9.
19		
20	116. Google could have stopped placing its ads on websites alleged to infringe Perfect 10 copyrights, but did not do so.	Zada Decl. ¶¶12-13,58, Exhs. 5-6, 43, 9.
21		
22	117. Google could have removed or disabled access to all links to websites that have infringed over 1,000 images belonging to a particular copyright holder such as Perfect 10, or are otherwise known by Google to be massive infringers of copyright, but did not do so.	Zada Decl. ¶68, Exh. 52.
23		
24		
25		
26		
27	118. Google could have sent copies of P10's infringed images to webmasters or advertisers and required them to remove such images or be	Zada Decl. ¶68, Exh. 52.
28		

1	delisted from Google search results, but did not	
2	do so.	
3	119. Google could have stopped providing	Zada Decl. ¶¶34, 37, Exhs. 22,
4	sponsored links to pay sites that infringe	25.
5	thousands of P10 Images, as identified in	
6	Perfect 10's notices, such as giganews.com,	
7	NewsRazor.net, Easynews.com,	
8	Thundernews.com, TigerUsenet.com,	
9	UsenetBinaries.com, Nggroups.net,	
10	rhinonewsgroups.com, newsgroups-	
11	download.com, newsgroup-binaries.com,	
12	usenet-access.com, Newsreader.com,	
13	powerusenet.com, supernews.com, and	
14	news.astraweb.com, but failed to do so.	
15	120. Google could have assigned one or two	Zada Decl. ¶67, Exh. 51.
16	employees or employed image recognition	
17	technology to stop providing the same	
18	infringing P10 Images, over and over, in its	
19	Image Search results, but did not do so.	
20	121. Google could have stopped publishing	Zada Decl. ¶65, Exh. 49.
21	confidential username/password combinations	
22	that allow unauthorized access to Perfect 10's	
23	website, as identified in Perfect 10's notices, but	
24	did not do so.	
25	122. Google could have removed from Google	Zada Decl. ¶65, Exh. 49.
26	search results websites that publish confidential	
27	username/password combinations, as identified	
28	in Perfect 10's notices, but did not do so.	
29	123. Google could have implemented a "check	Zada Decl. ¶53, Exh. 38, page 7.
30	the box" procedure for identifying infringing	
31	P10 "thumbnails" in its Image Search results but	
32	did not do so.	
33	124. Google has implemented a procedure for	Zada Decl. ¶53; Mausner Decl.
34	reporting images that are offensive but not for	Exh. C.
35	images that violate copyright.	
36	125. Google could have adopted and	Perfect 10 incorporates the
37	implemented a repeat infringer policy, but did	supporting evidence set forth for
38	not do so.	undisputed facts numbered 128-
39		138, below.

1	126. Google could have taken simple measures to prevent further damage to Perfect 10's copyrighted works, but did not do so.	Perfect 10 incorporates the supporting evidence set forth for uncontroverted facts numbered 103-125, above.
2		
3		
4	127. Perfect 10's experience with Google is not unique; others who have sent DMCA notices to Google have experienced the same refusal to act.	Declarations of Dean Hoffman and C.J. Newton, filed concurrently; Mausner Decl. Exh. C.
5		
6		
7	VII. GOOGLE'S INELIGIBILITY FOR DMCA SAFE HARBOR	
8	A. GOOGLE DID NOT SUITABLY IMPLEMENT A REPEAT INFRINGER POLICY	
9		
10	128. Clients whose websites Google hosts are account holders or subscribers of Google for the purposes of the Digital Millenium Copyright Act.	Zada Decl. ¶8, Exh. 1.
11		
12		
13	129. A user may set up a blogspot.com website hosted by Google without providing Google with his name or address.	Zada Decl. ¶¶6-7.
14		
15	130. In his declaration dated September 26, 2005, Alexander Macgillivray stated that "Google receives thousands of inquiries daily concerning search results, including notices about search results that link to allegedly improper content."	Zada Decl. ¶26, Exh. 14, page 29.
16		
17		
18		
19	131. Google has not produced to Perfect 10 in discovery, more than one thousand notices dated prior to September 26, 2005.	Zada Decl. ¶26.
20		
21	132. In his declaration dated September 26, 2005, Alexander Macgillivray stated, "If a notice does not contain enough information for Google to process, or if it otherwise fails the requirements of 17 U.S.C. § 512(c)(3), but contains contact information for the sender, Google's staff will typically email the sender requesting additional information."	Zada Decl. ¶26, Exh. 14, page 29.
22		
23		
24		
25		
26	133. Google has not produced to Perfect 10, a spreadsheet which details all the DMCA notices it has received and its response to each such	Zada Decl. ¶19.
27		
28		

1	notice.	
2	134. Google has not produced a DMCA log to	Zada Decl. ¶19.
3	Perfect 10.	
4	135. Google does not maintain a DMCA log for	Zada Decl. ¶19.
5	complaints it receives regarding websites that it	
6	hosts.	
7	136. Google does not keep track of the identity	Zada Decl. ¶19.
8	of the alleged infringer when it receives a notice	
9	alleging infringement on a website that Google	
10	hosts.	
11	137. Because Google has not maintained a	Zada Decl. ¶19.
12	searchable DMCA log, it cannot determine	
13	whether the owner of a particular website that it	
14	hosts has been the subject of multiple	
15	infringement notices.	
16	138. Because Google does not know, in many	Zada Decl. ¶19.
17	cases, the identity of the owner of a particular	
18	website that it hosts, it cannot determine if that	
19	person has been the subject of multiple notices	
20	of infringement.	
21	139. Google did not adopt or implement a	Perfect 10 incorporates the
22	repeat infringer policy.	supporting evidence set forth for
23		uncontroverted facts numbered
24		128-138, above.
25	A. GOOGLE IS INELIGIBLE FOR A DMCA SAFE HARBOR	
26	140. Google is not eligible for DMCA safe	Perfect 10 incorporates the
27	harbor.	supporting evidence set forth for
28		uncontroverted facts numbered
		27-100, 128-139, above, and
		141-158 and 164 below.
	B. PERFECT 10'S DMCA NOTICES WERE COMPLIANT	
	141. Google has removed links in its search	Zada Decl. ¶¶26, 61 Exhs. 14,
	results in response to some of Perfect 10's	45.
	notices.	
	142. Google has removed at least 1000 links in	Zada Decl. ¶¶26, 61 Exhs. 14,
	its search results in response to Perfect 10's	

1	notices.	45.
2	143. Perfect 10's DMCA notices contained a	Zada Decl. Exhs. 13, 22, 27, 37,
3	physical or electronic signature of Dr. Zada, a	41, 9.
4	person authorized to act on behalf of Perfect 10,	
5	the owner of an exclusive right that is allegedly	
6	infringed.	
7	144. Perfect 10's DMCA notices contained	Zada Decl. Exhs. 13, 22, 27, 37,
8	information reasonably sufficient to permit the	41, 9.
9	service provider to contact the complaining	
10	party, Dr. Zada of Perfect 10, including an	
11	address, telephone number, and an electronic	
12	mail address at which the complaining party	
13	may be contacted.	
14	145. Perfect 10's DMCA notices contained a	Zada Decl. Exhs. 13, 22, 27, 37,
15	statement that the complaining party has a good	41, 9.
16	faith belief that use of the material in the manner	
17	complained of is not authorized by the copyright	
18	owner, its agent, or the law.	
19	146. Perfect 10's DMCA notices contained a	Zada Decl. Exhs. 13, 22, 27, 37,
20	statement that the information in the notification	41, 9.
21	is accurate, and under penalty of perjury, that	
22	the complaining party is authorized to act on	
23	behalf of the owner of an exclusive right that is	
24	allegedly infringed.	
25	147. Perfect 10's January 3, 2005 notice to	Zada Decl. ¶24, Exh. 13.
26	Google contained references to pages of a	
27	particular Volume and Issue of Perfect 10	
28	Magazine in which images of a particular model	
	claimed to be infringed were located.	
	148. Perfect 10's May 31, 2004, June 4, 2004,	Zada Decl. ¶26, Exh. 9.
	and July 19, 2004 notices were sent in electronic	
	format.	
	149. Perfect 10 began to send to Google copies	Zada Decl. ¶¶39-47; Exhs. 26-
	of the actual infringing web pages in June of	34.
	2007, as part of its notices. These web pages	
	contained both the URL where the infringing	
	image or images were located, as well copies of	
	the actual infringed/infringing images.	
	150. Perfect 10's June 28, 2007 and July 2,	Zada Decl. ¶¶33-35, 38-58,

1	2007 notices contained copies of images alleged to have been infringed.	Exhs. 22-23, 26-43.
2		
3	151. All of Perfect 10's notices, sent after June 28, 2007, contained copies of images alleged to have been infringed.	Zada Decl. ¶¶33-35, 38-58, Exhs. 22-23, 26-43.
4		
5	152. Perfect 10's June 28, 2007 notice contained an identification of the copyrighted work claimed to have been infringed.	Zada Decl. ¶¶33-35, 39, Exhs. 22-23, 26.
6		
7	153. Perfect 10's DMCA notices from June 28, 2007 onward, contained an identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site were covered by a single notification, a representative list of such works at that site.	Zada Decl. ¶¶33-35, 38-58, Exhs. 22-23, 26-43.
8		
9		
10		
11		
12	154. For virtually all of the URLs provided in Perfect 10's notices, from June 28, 2004 onwards, Perfect 10 provided an identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site were covered by a single notification, a representative list of such works at that site.	Zada Decl. ¶24, Exhs. 13, 9.
13		
14		
15		
16		
17	155. Google was able to remove or disable access to a search result containing a URL if it was given the URL by itself or the URL along with a copy of the actual web page identified by that URL.	Zada Decl. ¶¶26, 61-63, Exhs. 14, 45-47; Pallas Depo. 145:6-146.10; 148:23-149:7, attached as Exh. G to Mausner Decl. (filed under seal); O'Connor Decl. ¶¶4-6, Exh. 1; Chumura Decl. ¶¶3-5, Exh. 1; Declaration of Sheena Chou ("Chou Decl.") ¶8.
18		
19		
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23	156. Perfect 10's DMCA notices provided sufficient information for Google to remove or disable access to the material that was claimed to be infringing or to be the subject of infringing activity.	Zada Decl. ¶¶26, 61-63, Exhs. 14, 45-47; Pallas Depo. 145:6-146.10; 148:23-149:7, attached as Exh. G to Mausner Decl. (filed under seal); O'Connor Decl. ¶¶4-6, Exh. 1; Chumura Decl. ¶¶3-5, Exh. 1; Chou Decl. ¶8.
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1	157. Perfect 10's notices were compliant, since they followed the statutory requirements of the DMCA.	Perfect 10 incorporates the supporting evidence set forth for uncontroverted facts numbered 141-156, above.
2		
3		
4	158. Google has the same level of control over its index as did Napster.	Deposition of Dr. John Levine, Google's expert witness, 234:4-13, attached as Exh. E to Mausner decl.
5		
6		
7	159. Google is as responsible for the display of a P10 Image via in-line linking or framing as the website that stores the P10 Image.	Deposition of Dr. John Levine, Google's expert witness, 207:9-23, attached as Exh. E to Mausner decl.
8		
9		
10	160. Perfect 10 images have been viewed and/or downloaded millions of times from websites to which Google.com links.	Zada Decl. ¶66, Exh. 50.
11		
12	161. Passwords displayed by Google have been used, whether by Google's users, or by others, to make over 3.0 million unauthorized downloads of images from Perfect 10's website, from October 27, 2007 through January 24, 2009.	Zada Decl. ¶65, Exh. 49.
13		
14		
15		
16	162. Google users have done searches using Google's search engine to locate unauthorized Perfect 10 passwords, and then used those passwords to gain unauthorized access to Perfect 10's website.	Zada Decl. ¶65, Exh. 49.
17		
18		
19		
20	163. Society does not benefit when Google assists thieves in selling stolen material, whether it be P10 Images, full-length movies, or songs.	Zada Decl. ¶¶14, 34-36, Exhs. 7, 22-24.
21		
22	164. Perfect 10's experience with Google is not unique; others who have sent DMCA notices to Google have experienced the same refusal to act.	Declarations of Dean Hoffman and C.J. Newton, filed concurrently; Mausner Decl. Exh. C.
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1 Conclusions of Law:

- 2 1. Google is contributorily liable for copyright infringement.
3 2. Google is directly liable for copyright infringement.
4 3. Google is vicariously liable for copyright infringement.
5 4. Google is not eligible for safe harbor under the Digital Millennium Copyright
6 Act (DMCA), 17 U.S.C. §512.

7 Dated: July 5, 2009

Respectfully submitted,
LAW OFFICES OF JEFFREY N. MAUSNER

8
9 By: Jeffrey N. Mausner

10 Jeffrey N. Mausner
11 Attorneys for Plaintiff Perfect 10, Inc.
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