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10
 11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

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

15 Plaintiff,

16 v.

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

19 Defendants.

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 28
 AND CONSOLIDATED CASE.

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

**DECLARATION OF SHEENA
 CHOU SUBMITTED IN OPPOSITION
 TO GOOGLE’S THREE MOTIONS
 FOR SUMMARY JUDGMENT RE
 DMCA SAFE HARBOR FOR ITS
 WEB AND IMAGE SEARCH,
 BLOGGER SERVICE, AND
 CACHING FEATURE (DOCKET NOS.
 428, 427, AND 426)**

BEFORE JUDGE A. HOWARD MATZ

Date: October 5, 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 **DECLARATION OF SHEENA CHOU**

2 I, Sheena Chou, declare as follows:

3 1. I submit this declaration in connection with Perfect 10's lawsuit against
4 Google. Except where otherwise stated, I have direct and personal knowledge of the
5 facts set forth herein and, if called as a witness, could and would competently testify
6 thereto. I am very familiar with Perfect 10's website and with the Adobe style DMCA
7 notices that Perfect 10 has sent Google . I have also read Google's published
8 instructions for submitting Blogger and Image Search DMCA notices.

9 2. I currently work part time for Perfect 10, Inc. I have a degree in
10 Economics from UCLA and am quite familiar with computers and the Internet.

11 3. One of my jobs at Perfect 10 has been to download infringing Perfect 10
12 images from various pay websites. I have personally downloaded more than 15,000
13 Perfect 10 images from each of at least twenty of the pay sites listed on pages 5 and 6
14 of Exhibit 22 to the Declaration of Dr. Norman Zada ("Zada Declaration"), filed
15 concurrently herewith. I have also downloaded thousands of Perfect 10 images from
16 other pay sites listed on those pages. I am very familiar with Perfect 10's images. I
17 have reviewed Perfect 10's website to become familiar with those images. In addition,
18 many of the images from the infringing pay websites contain Perfect 10's copyright
19 notice on the image, as they appear on Perfect 10's website, or are organized in groups
20 of images with titles that clearly indicate that they are from Perfect 10, such as "Your
21 requested P10 Website," "Some of your P10 Gallery," "Your P10 2006 fills,"
22 "requested P10 2007's." The pay websites from which I have downloaded thousands
23 of infringing Perfect 10 images include, but are not limited to: 100proofnews.com,
24 1usenet.com, active-news.com, alibis.com, anonymousnewsfeed.com, astraweb.com,
25 athenanews.com, binaries.net, bubbanews.com, cheapnewsgroups.com, eurofeeds.com,
26 fastusenet.com, galacticgroups.com, giganews.com, infinityusenet.com,
27 maximumusenet.com, newsdemon.com, newsgroup-binaries.com,
28 newsgroupdirect.com, newsgroups-download.com, newsreader.com,

1 planetnewsgroup.com, powerusenet.com, rhinonewsgroups.com, supernews.com,
2 thundernews.com, tigerusenet.com, usenet.com, usenet-access.com, usenet-
3 unlimited.com, usenetgiant.com, usenetmonster.com, and usenetrocket.com.

4 4. I have observed that those pay sites also offer thousands of full-length
5 movies and songs. I have observed that Dr. Zada has downloaded large numbers of
6 images from those sites as well. My experience with the pay sites listed on pages 5
7 and 6 of Exhibit 22 of the Zada Declaration is that they all offer the same images, but
8 that they rotate the images that they offer. In other words, a particular group of Perfect
9 10 images (“P10 Images”) may be available for download for several months, and then
10 not available for several months, and then once again available. While one group of
11 Perfect 10 images may not be available, other groups are. The period of time a group
12 of images is available is often called the “retention period.” The websites have
13 different retention periods. The longer the retention period, the greater the number of
14 images that are available for download at any one time. That is why I was able to
15 download more images from some sites than from others. But in the end, the P10
16 Images available from the aforementioned websites over time appear to be the same.

17 5. I have been able to readily find P10 Images on such websites by doing
18 searches on “P10”; P10 in combination with a date, such as “P10 2004”; the model
19 name; or the image URL of the image, such as Marisa_Miller_44.jpg.

20 6. One of my other assignments has been to determine whether Google has
21 removed from its search results, URLs identified by Perfect 10. I have been able to do
22 this simply by inputting the URL provided by Perfect 10, without the starting http:// or
23 www., into the Google search box.

24 7. The Adobe files provided by Perfect 10 in its notices have been sufficient
25 to allow Google to find the infringing material. I know this because I have extracted
26 hundreds of URLs from those same files using Adobe’s URL extraction feature, and
27 have placed those same URLs into Google’s search box or into my browser bar to
28 verify that those web pages were still either directly linked to by Google in its search

1 results, or were still on Google's blogger.com servers. I was able to locate the
2 infringing material in this manner using the URLs provided by Perfect 10 in its notices.
3 I have been able to extract URLs from Adobe documents at the rate of approximately 5
4 URLs a minute.

5 8. One of my other assignments has been to determine whether Google has
6 removed full-size Perfect 10 images from Google's blogger.com servers in response to
7 Perfect 10's notices. By "blogger.com URLs," I will mean web pages or URLs that
8 include the term blogger.com. By "blogspot.com URLs," I will mean web pages or
9 URLs that include the term blogspot.com. From what I have seen, Google's
10 blogspot.com hosting program is different from its blogger.com image storage
11 program. The blogspot.com site typically displays medium-size P10 Images and text
12 (see for example Exhibit 1, which I downloaded from blogspot.com on August 3,
13 2009. I have covered the non-P10 Image on that page. When I have clicked on such
14 medium-size P10 Images, a full-size P10 Image on a blogger.com web page has often
15 appeared on my screen, devoid of any text. (An example of this is shown in Exhibit 2,
16 which is what appeared on my screen when I clicked on the medium-size P10 Image
17 shown in Exhibit 1. I downloaded this image from blogger.com on August 3, 2009.
18 Between May 18, 2009 and July 3, 2009, I verified that at least 3737 blogger.com
19 URLs, which were extracted from Perfect 10's Adobe notices sent to Google from July
20 2, 2007 through July 9, 2008, when inputted into my browser bar, still resulted in P10
21 Images accessible to Internet users. I used our Adobe program to resave those images
22 in PDF format. The date shown on each Adobe file is the date that I resaved the
23 image. I have verified that at most 71 of the blogger URLs, out of approximately 3808
24 URLs identified by Perfect 10 in its notices, have been disabled as of May 18, 2009.
25 Most of these 71 URLs were not disabled until months after Google first received
26 notice from Perfect 10. The vast majority of the blogger.com URLs in Perfect 10's
27 notices, at least 3737 out of 3808, had not been disabled at the time that I performed
28 this assignment, many months after Perfect 10 had sent the notices to Google. My

1 work relating to P10 Images on blogger.com web pages is contained in Exhibit 9 (the
2 disk), in a folder labeled “blogger up 51809.” The adobe files in that folder show the
3 dates for which full-size P10 Images were still available on blogger.com servers. The
4 excel spreadsheet that I made, which summarizes the results of my work, is contained
5 in the same folder in Exhibit 9 entitled “blogger up 51809.” The excel spreadsheet
6 gives the URL of the web page on the left, with the starting http:// and possibly www.
7 removed. I have been able to locate the infringing P10 Images by simply inputting that
8 URL into my browser bar without the starting http:// and possibly www. The “B” and
9 “C” columns of the spreadsheet give dates when those images were identified in
10 Perfect 10 DMCA notices to Google. The date on the right gives the last date that
11 Perfect 10 has an Adobe file showing that the P10 Image was still available at that
12 blogger.com URL. (Those Adobe files are contained in Exhibit 9, in the folder entitled
13 “blogger up 51809.”) The only URLs that I was not able to retrieve the P10 Image for
14 between May 18, 2009 and July 3, 2009 are the ones that are shown in red at the
15 bottom of the spreadsheet.

16 9. I was also assigned to determine the number of blogspot.com post URLs
17 and other blogspot.com URLs that Perfect 10 identified to Google in its notices, and
18 the number of identified blogspot.com post-URLs that Google had not suppressed as of
19 July 2009. I will use the term “post URL” to refer to what Google’s Blogger DMCA
20 instructions call the “permalink of the post.” I found at least 219 blogspot.com URLs
21 that were not post URLs, and at least 329 blogspot.com post URLs, for a total of at
22 least 548 blogspot.com URLs, that Perfect 10 identified to Google in its Adobe style
23 notices, beginning June 28, 2007. Of the 329 post URLs identified to Google, at least
24 201 had not been suppressed as of July 2009. My work is contained in Exhibit 9, the
25 disk, in a folder labeled “Post URLs not removed.” In that folder, I have also included
26 a spreadsheet labeled “Infringing post URLs not removed,” which is similar to the one
27 appearing in Exhibit 45 to the Zada Declaration, except larger. The left column
28 contains the infringing identified blogspot.com post URL, with the starting http:// and

1 possibly www. removed. The second column, entitled “Notice Date,” contains the
2 date of the DMCA notice which identified that infringing web page. The third column,
3 entitled “Up,” contains the last date I verified that webpage was still live. The final
4 column, entitled “Web Search,” contains a “YES” if Google was directly linking to
5 that infringing web page via its Web Search results. I have also included adobe files
6 which provide evidentiary support for the spreadsheets, and a spreadsheet labeled
7 “other blogspot URLs,” which has a listing of 219 other infringing blogspot.com web
8 pages that were identified by Perfect 10s Adobe style notices.

9 10. I have observed that in a number of cases, the full-size blogger image still
10 appears on Google’s blogger.com servers, even when the original blogspot site that
11 displayed those images no longer exists. In those situations, there is no permalink or
12 top level domain of the blog and date of the blog entry that Perfect 10 could provide,
13 as requested by Google. Furthermore, Perfect 10 has provided the top level domain
14 with the date, as well as the permalink, in most notices, because it has sent to Google a
15 copy of the infringing web page which typically displays that information. Perfect 10
16 has also provided to Google, in its DMCA notices, the complete URL of the
17 blogger.com web page containing the full-size P10 image, along with a copy of that
18 web page.

19 11. I am quite familiar with perfect10.com, which is not a blog. The images
20 on perfect10.com cannot be identified by a “permalink of the post” as there is no such
21 thing on perfect10.com. I have examined thousands of infringing blogger.com web
22 pages that Perfect 10 included in its DMCA notices to Google. Those web pages
23 consisted of a P10 Image and a blogger.com URL. There was no other text on those
24 web pages, no posts, and no “permalink of a post.”

25 12. I have studied Google’s DMCA instructions for Image Search and for
26 Web Search. Based on my experience, I believe that Google Image Search instructions
27 are in most cases completely unnecessary, and in many cases, unworkable, as
28 illustrated by the website nudecelebforum.com. This website has infringed thousands

1 of P10 Images. It has approximately 60 infringing web pages that contain
2 approximately 17,000 P10 Images. To identify the 60 infringing web pages, Perfect 10
3 could send to Google 60 URLs, with or without the copies of the actual infringing web
4 pages. Once Google received those 60 URLs, to block any Google Image Search links
5 from directly linking to any of those infringing web pages, Google would have to
6 remove all thumbnails in its Image Search results that link to any of those 60 web
7 pages, even if the Image Search thumbnail is not a P10 thumbnail, so long as it links to
8 a web page that contains infringing P10 Images. *So by specifying 60 Web page URLs,*
9 *Perfect 10 could permanently block any of 17,000 P10 images from ever appearing in*
10 *Google's Image Search results.* However, according to Google's Image Search
11 instructions, Google will only block P10 Images from nudecelebforum.com that are
12 *currently* in Google's Image Search results. So it would be impossible to prevent all
13 17,000 P10 Images from appearing in Google's Image search results using Google's
14 Image Search instructions, unless all 17,000 Images were indexed, in which case
15 Perfect 10 would have to identify 17,000 Image URLs, which would be extraordinarily
16 time consuming and completely unnecessary. Furthermore, even if Perfect 10 were
17 able to do that, Google could still link to the same infringing web pages using a non-
18 P10 thumbnail. That is why by far the best way to identify the infringing material on
19 nudecelebforum.com is to provide the URLs for the 60 infringing web pages. Even
20 though Google's Image Search instructions, in most cases, make the notification
21 process much harder than it needs to be, I have seen that Perfect 10 has identified
22 infringing P10 Images following Google's Image Search instructions, but that Google
23 nevertheless has not removed such identified images from its Image Search results.

24 I declare under penalty of perjury under the laws of the United States of
25 America that the foregoing is true and correct to the best of my knowledge. Executed
26 on August 3, 2009, in Los Angeles County, California.


27 
28 Sheena Chou

Exhibit 1

Poze Fete | Poze Fete Frumose | Poze Fete Romania | Poze Fete Dragute

Poze fete Frumose, Poze Femei Bune, Poze Fete Romania, Femei Adevarate pentru Desktop

Saturday, April 21, 2007



Amy Weber Wallpapers



Exhibit 2

