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9	Attorneys for Defendant Google Inc.					
10						
11	UNITED STATES	DISTRICT COURT				
12	CENTRAL DISTRI	CT OF CALIFORNIA				
13	PERFECT 10, INC., a California	CASE NO. CV 04-9484 AHM (SHx) [Consolidated with Case No. CV 05-				
14	corporation, [Consolidated with Case No. CV 05-4753 AHM (SHx)]					
15		GOOGLE INC.'S EVIDENTIARY OBJECTIONS TO THE				
16	VS.	DECLARATION OF DR. NORMAN ZADA IN OPPOSITION TO				
17	GOOGLE INC., a corporation; and DOES 1 through 100, inclusive,	GOOGLE'S THREE MOTIONS FOR SUMMARY JUDGMENT RE DMCA				
18	Defendants.	SAFE HARBOR FOR ITS WEB AND IMAGE SEARCH, BLOGGER				
19	AND COUNTERCLAIM	SERVICE, AND CACHING FEATURE				
20		Hon. A. Howard Matz				
21	PERFECT 10, INC., a California corporation,	Date: None Set (Taken Under				
22	Plaintiff,	Submission) Time: None Set				
23	vs.	Place: Courtroom 14				
24	AMAZON.COM, INC., a corporation;	Discovery Cut-off: None Set Pre-trial Conference: None Set				
25	A9.COM, INC., a corporation; and DOES 1 through 100, inclusive,	Trial Date: None Set				
26	Defendants.	[PUBLIC REDACTED]				
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GOOGLE'S OBJECTIONS TO THE DECLARATION OF NORMAN ZADA

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Norman Zada, 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. The Zada Declaration is improper under Federal Rule of Civil Procedure 56(e), for its inclusion of legal argument, improper opinions, conjecture, speculation and irrelevant matters. Because large portions of the Zada Declaration are inadmissible, it should be disregarded for purposes of ruling on Google's DMCA Motions.1

Google respectfully submits the following objections to the Declaration of

#### Rather Than Declaring to Factual Matters, the Zada Declaration Includes Improper Legal Arguments, Speculation, and Personal Opinions.

The Zada Declaration is largely inadmissible and should be disregarded as such. Rule 56(e) requires that "[a] supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated." A party may not defeat summary judgment by relying on conclusory allegations and speculation. Instead,

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Evidence submitted to the Court on motion practice must meet all requirements for admissibility of evidence if offered at the time of trial. Beyene v. Coleman Sec. Services, Inc., 854 F.2d 1179, 1181-1182 (9th Cir. 1988); Travelers Cas. & Sur. Co. of Am. v. Telstar Const. Co., Inc., 252 F. Supp. 2d 917, 923 (D. Ariz. 2003). See also Fed. R. Evid. 101 (Rules of Evidence apply to all proceedings in the courts of the United States); Fed. R. Evid. 1101 (listing exceptions to Rule 101). Such evidence must be relevant to the claims and defenses of the case. Fed. R. Evid. 401; 403; McCormick v. City of Lawrence, Kan., 2007 WL 38400, at \*3 (D. Kan. Jan. 5, 2007). Testimonial evidence must be based on the personal knowledge of the witness offering the evidence. Fed. R. Evid. 602. Documentary evidence must be properly authenticated. Fed. R. Evid. 901. Hearsay evidence is inadmissible unless it has been defined as non-hearsay or the proponent establishes eligibility for one or more exceptions under the Rules. Fed. R. Evid. 801-804. Testimony requiring scientific, technical, or other specialized knowledge may be given only by an expert witness with the requisite knowledge, skill, experience, training, or education, and opinion testimony is not permitted of a lay person. Fed. R. Evid. 701, 702.

declarations must be based on facts known to the declarant and set forth concrete
particulars in order to satisfy Rule 56(e). E.g., Fujitsu Ltd. v. Fed. Express Corp.,

247 F.3d 423, 428 (2d Cir.), cert. denied, 534 U.S. 891 (2001); Bickerstaff v. Vassar

College, 196 F.3d 435, 451-52 (2d Cir. 1999), cert. denied, 530 U.S. 1242 (2000).

Similarly, a declaration may not set forth legal argument. Silver v. Exec. Car Leasing
Long Term Disability Plan, 466 F.3d 727, 732 (9th Cir. 2006).

Little of the Zada declaration could be classified as fact. Instead, the Zada Declaration largely is comprised of speculation and improper opinion testimony as to how Google works, conjecture as to what Google may or may not have done in response to Perfect 10's purported DMCA notices, Zada's own personal interpretation of Google's discovery productions, and advice on how Zada would design his own DMCA compliance program were he in Google's shoes. Much of the Zada Declaration is argumentative and speculative, and at nearly 70 pages in length, it effectively constitutes additional briefing from Perfect 10, rather than a proper Rule 56 declaration. The improper portions of the Zada Declaration should be stricken as such.

### B. Zada's Out-of-Context Excerpting of P10's DMCA Notices Violates the Best Evidence Rule and is Otherwise Irrelevant.

The Zada Declaration selectively excerpts certain screenshots allegedly contained somewhere within one or more of P10's DMCA Notices to Google, and arguing that if those screenshots are DMCA-compliant, the entirety of the notices in question must be DMCA-compliant as well. This is improper. Each of Perfect 10's DMCA Notices must be evaluated as a whole, in the context in which it was received—typically discs or hard drives containing thousands of pages of screenshots—not by cherry-picking a handful of screenshots in isolation, as if they had been delivered in that fashion. If P10 wishes the Court to consider the contents of its DMCA notices, it must submit true and correct copies of them and direct the Court to where in those notices the specified information may be found. Anything

less than the complete notices is irrelevant, and moreover, such evidence lacks foundation, is unduly prejudicial, and of course, violates the best evidence rule. *Dugan v. R.J. Corman R.R. Co.*, 344 F.3d 662, 669 (7th Cir. 2003) (relying on snippets of evidence rather than introducing evidence as a whole violates best evidence rule and rule of completeness, Fed. R. Evid. 106, as it allows party to take evidence out of its proper context).

## C. The Portions of the Zada Declaration Regarding "The Sample" Are Irrelevant and Improperly Submitted.

Zada's Declaration discusses a purported "Sample" of images, rather than addressing all of the copyright infringement claims P10 has alleged, as Google's DMCA Motions do. *See, e.g.*, Zada Decl. ¶¶ 1-2, Exh. 9 (describing as DMCA Motions address the *entirety* of P10's copyright claims (grouped by the type of DMCA notice in which it was asserted), the extensive discussions and exhibits in the Zada Declaration regarding this small subset of images is irrelevant and cannot defeat summary judgment, particularly as to the omitted purported claims. *See Dugan*, 344 F.3d at 669 (labeling similar tactics a "bad practice": "Imagine the trial of a breach of contract case in which the contract is not placed in evidence, but only a few snippets . . . .").

# D. <u>Much of the Alleged Infringements Identified in the Zada Declaration</u> Have No Bearing on Google's Entitlement to Safe Harbor.

The Zada Declaration also includes lengthy asides about massive alleged infringements of Perfect 10's copyrights not contained in any valid DMCA notice to Google. See, e.g., Zada Decl. ¶ 34. These statistics are irrelevant. Perfect 10's fixation on quantity misses the point of the instant Motions, and of DMCA safe harbor itself: no matter how many infringements of Perfect 10's copyrights Perfect 10 alleges to have occurred on the Internet, none of this has any bearing on Google's qualification for safe harbor unless (1) the infringements are hosted by or linked to by

Google, and (2) Google receives a DMCA-compliant notice regarding them. The 3 4 5 6 8

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#### data Zada cites to lacks foundation, is not properly documented, is taken out of context, and the potential prejudice to Google far outweighs any probity this evidence might have. Fed. R. Evid. 403; see also Lucero v. Donovan, 354 F.2d 16, 22 n. 7 (9th Cir. 1965). Moreover, these statements appear to be based upon the incorrect assumption that pointing to large numbers of purported infringements somehow absolves Perfect 10 from its responsibilities under the DMCA. Zada's references to various data regarding the number of alleged infringements also is at odds with Perfect 10's repeated claims that it is incapable of identifying specific infringements of each P10 image. E.g., Zada Decl. ¶¶ 8, 70.2

#### **Individual Objections** $\mathbf{E}$ .

Even if this Court does not disregard the entirety of the Zada Declaration, various portions are objectionable and inadmissible as specified below.

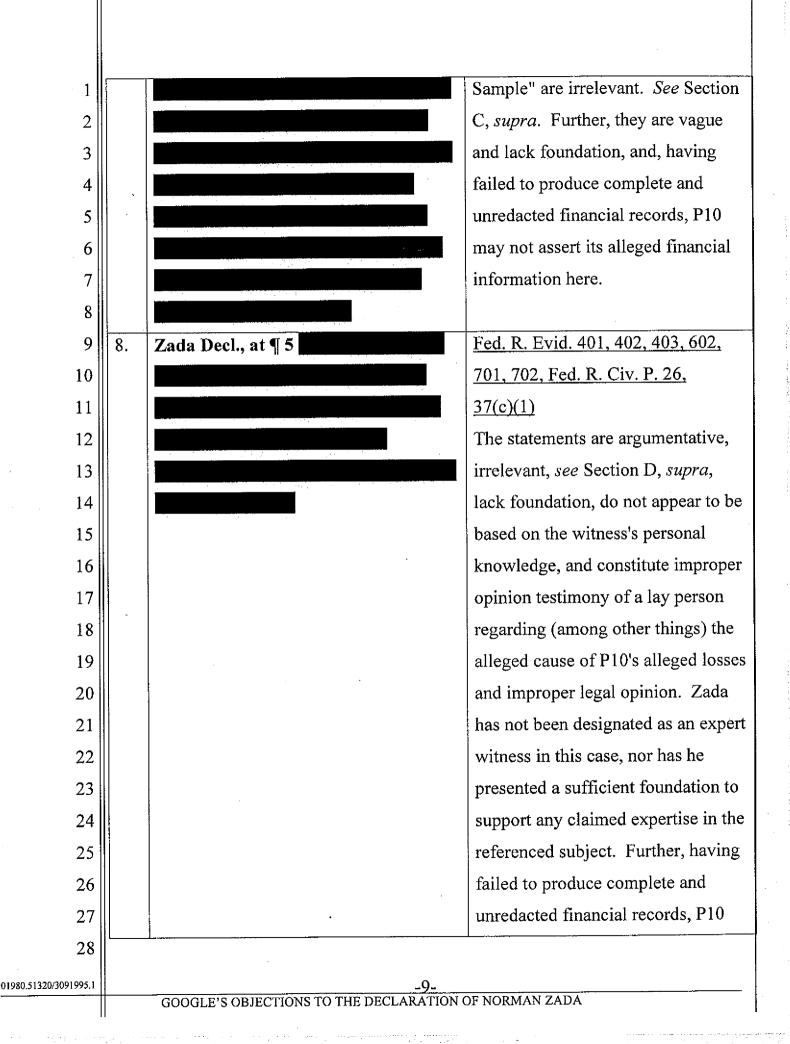
Objection -
Fed. R. Evid. 401, 402, 403, 602
The statements are irrelevant,
because Google does not crawl or
link to content on Usenet sites or
other password-protected websites.

<sup>2</sup> The Zada Declaration also includes various references to alleged infringements of the works of others not associated in any way with this litigation, on a variety of websites that were not the subject of a valid DMCA notice to Google. Zada Decl. ¶¶ 15, 34-36. This is improper for at least two reasons. First, P10 does not have an ownership interest in the various songs and films it references, and lacks even standing to assert claims on the copyright owners' behalves. Silvers v. Sony Pictures Entm't, Inc., 402 F.3d 881, 886 (9th Cir. 2005) ("only owners of an exclusive right in the copyright could bring suit.") (emphasis in original). Second, these alleged infringements have no apparent connection with Google.

. 1		Haahr Dec. ¶¶ 14-15. They also are
2		speculative and lack foundation.
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15	2. Zada Decl., at ¶1	Fed. R. Evid. 401, 402, 403
16		The statements regarding "The
17		Sample" are irrelevant. See Section
18		C, supra. The statements also lack
19		foundation (because the proffered
20		evidence does not support that P10
21		owns valid copyrights in all of the
22		images being asserted in this
23		action).
24	3. Zada Decl., at ¶ 2	Fed. R. Evid. 401, 402, 403, 602,
25		<u>701</u>
26		The statements regarding "The
27		Sample" are irrelevant. See Section
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	GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

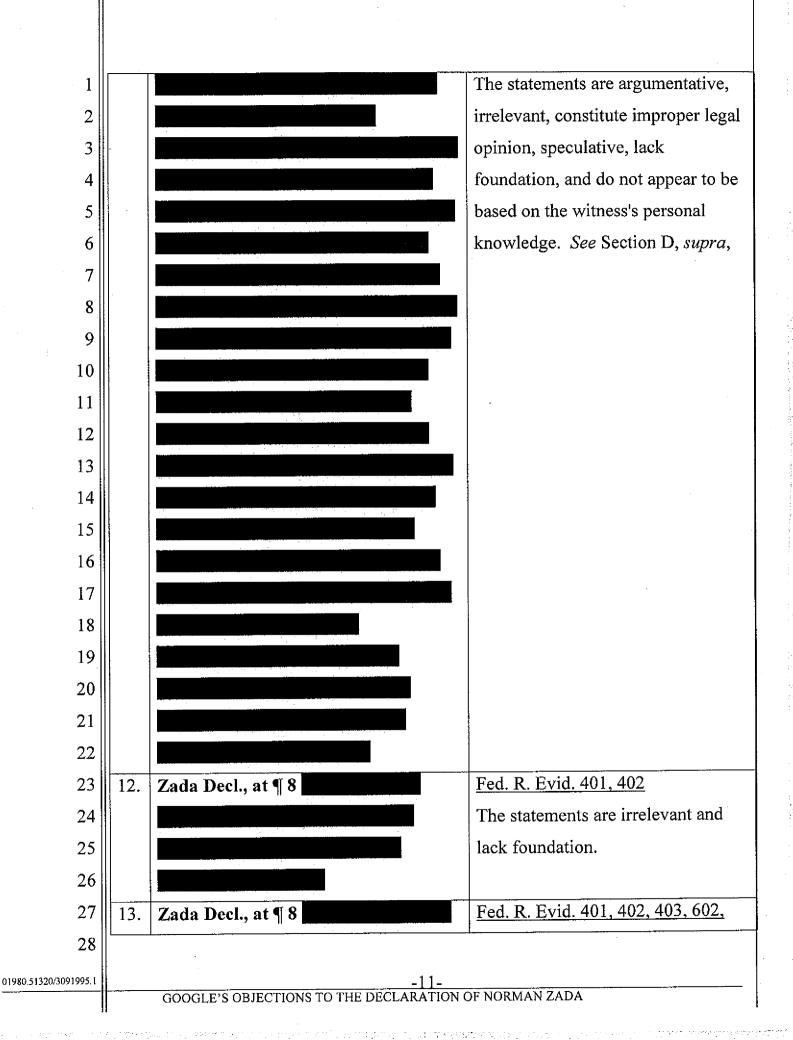
C, supra. The statements are also 1 irrelevant because Zada's personal 2 opinions regarding expeditiousness 3 have no bearing on the legal 4 standards at issue and lack 5 6 foundation. Fed. R. Evid. 401, 402, 403, 602 7 4. Zada Decl., at ¶ 2 The statements are argumentative, 8 irrelevant, speculative and lack 9 foundation. 10 11 12 13 14 15 Fed. R. Evid. 401, 402, 403, 602, 16 Zada Decl., at ¶ 2 5. 17 1002 The statements regarding "The 18 Sample" are irrelevant. See Section 19 20 C, supra. The statements regarding the cherry-picked excerpts of P10's 21 DMCA Notices also are irrelevant, 22 lack foundation, and violative of the 23 best evidence rule. See Section B, 24 25 supra. 26 27 28 01980.51320/3091995.1

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3	6. Zada Decl., at ¶ 3	Fed. R. Evid. 401, 402, 403, 602,
4		701, 702, Fed. R. Civ. P. 26
5	•	The statements are irrelevant,
6		speculative, lack foundation, do not
7		appear to be based on the witness's
8		personal knowledge, and constitute
9		improper opinion testimony of a lay
10		person. Zada has not been
11		designated as an expert witness in
12		this case, nor has he presented a
13		sufficient foundation to support any
14		claimed expertise in the referenced
15		subjects. Nor does he tie his
16		purported expertise or opinions to
17		Google's search engine or services.
18		See Daubert v. Merrell Dow
19		Pharms, Inc., 509 U.S. 579, 591
20		(1993) ("[fit] goes primarily to
21		relevance," in that an expert's
22		testimony must "aid the jury in
23	·	resolving a factual dispute.").
24	7. Zada Decl., at ¶ 5	Fed. R. Evid. 401, 402, 403, 602,
25		701, 702, Fed. R. Civ. P. 26,
26		37(c)(1)
27		The statements regarding "The
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	GOOGLE'S OBJECTIONS TO THE	DECLARATION OF NORMAN ZADA

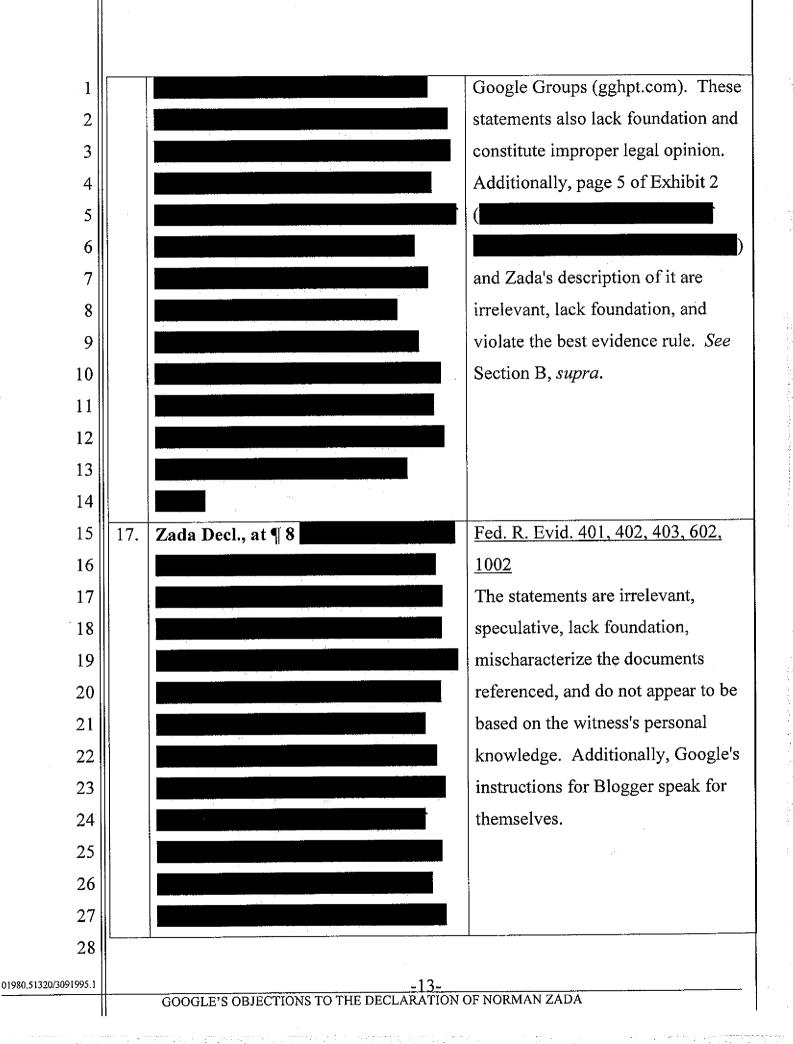


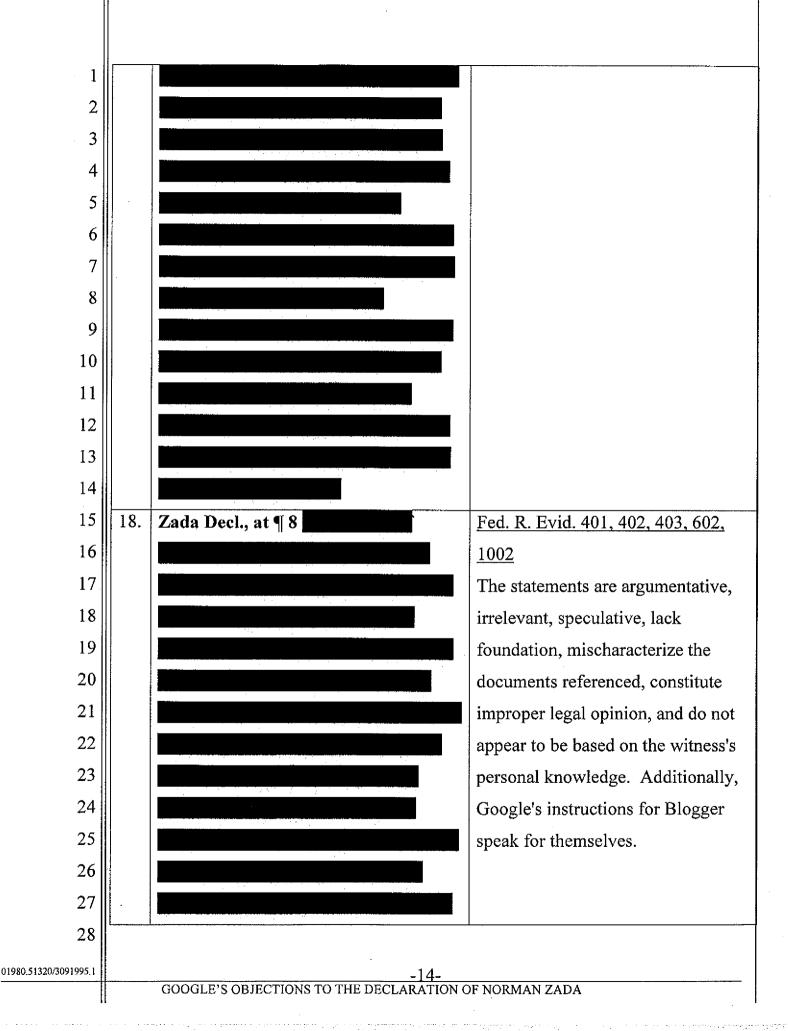
1			may not assert its alleged financial
2			information here.
3	9.	Zada Decl., at ¶ 5	Fed. R. Evid. 401, 402, 403, 602,
4			702, Fed. R. Civ. P. 26.
5			The statements are argumentative,
6			irrelevant, constitute improper legal
7			opinion, speculative, and lack in
8			foundation. See Section D, supra.
9			The statements also do not appear to
10			be based on the witness's personal
11			knowledge, constitute improper
12			legal opinion, and constitute
13			improper opinion testimony of a lay
14			person regarding (among other
15			things) P10's alleged losses and
16			losses allegedly suffered by
17			nonparties in this litigation. Zada
18			has not been designated as an expert
19			witness in this case, nor has he
20			presented a sufficient foundation to
21	-		support any claimed expertise in the
22			referenced subjects.
23	10.	Zada Decl. ¶ 6	Fed. R. Evid. 401, 402, 403, 602
24			The statements are irrelevant,
25			speculative, and lack foundation.
26			See Section D, supra.
27	11.	Zada Decl., at ¶ 8	Fed. R. Evid. 401,402, 403, 602
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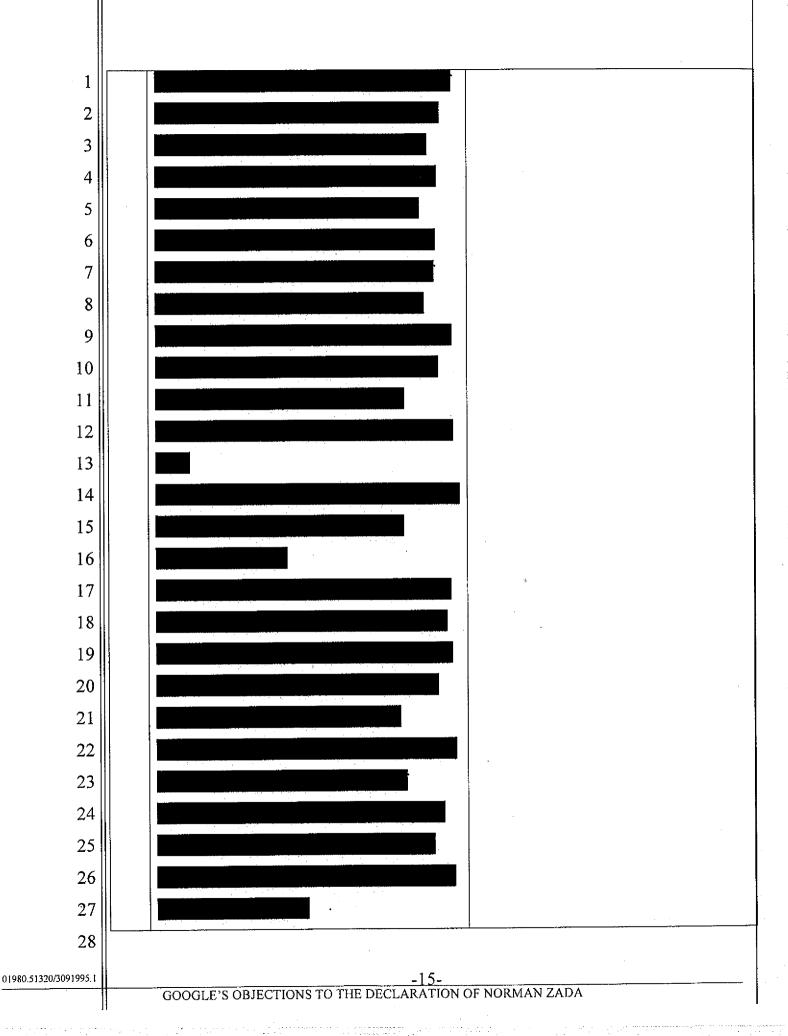
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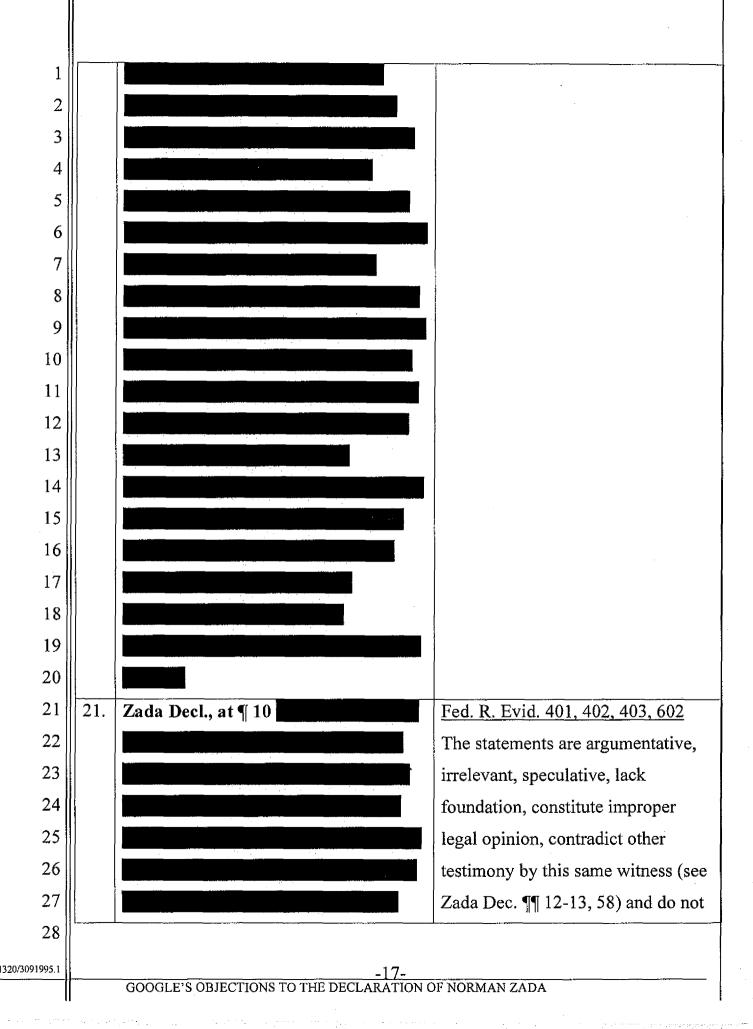
1			701
2	,		The statement is argumentative,
3			irrelevant, and mischaracterizes the
4			documents referenced.
5	14.	Zada Decl., at ¶ 8	Fed. R. Evid. 401, 402, 403, 602,
. 6			<u>701</u>
7			The statements are argumentative,
8			irrelevant, speculative, lack
9			foundation, mischaracterize the
10			documents referenced, do not
11			appear to be based on the witness's
12			personal knowledge, and constitute
13			improper opinion testimony and
14			legal opinion.
15			
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17	15.	Zada Decl., at ¶ 8	Fed. R. Evid. 401, 402
18			The statement and referenced
19			portion of Exhibit 1 (regarding
20			AOL's alleged DMCA
21			requirements) are irrelevant to
22			Google's qualification for safe
23			harbor.
24	16.	Zada Decl., at ¶ 8	Fed. R. Evid. 401, 402, 602, 1002
25			These statements are irrelevant,
26			because P10 never sent Google a
27			valid DMCA notice directed to
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		GOOGLE'S OBJECTIONS TO THE DECLARATION O	DF NORMAN ZAĐA





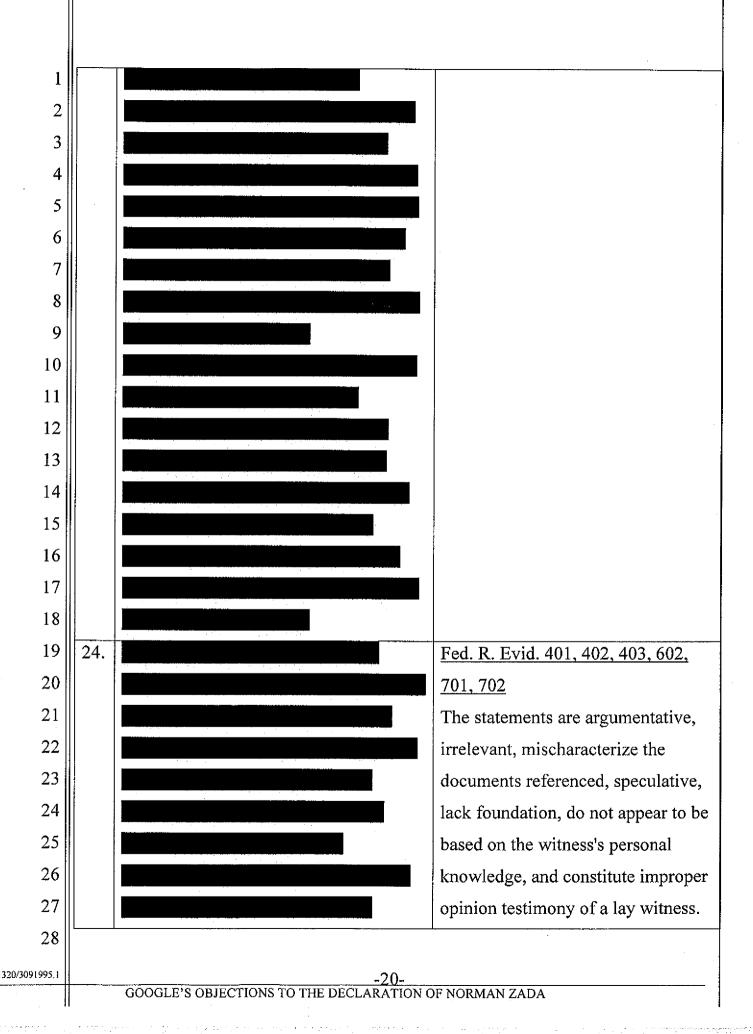


2    [	19. Zada Decl., at ¶ 8	Fed. R. Evid. 401, 402, 403, 602
3		1002
4		The statements are irrelevant,
5		because AOL's DMCA
6		requirements have no bearing he
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13	20. Zada Decl., at ¶ 9	Fed. R. Evid. 401, 402, 403, 602
14		1002
15		Page 5 of Exhibit 2 (
16		
17		) and Zada's
18		description of it are irrelevant, l
19		foundation, constitute improper
20		legal opinion, and violate of the
21		evidence rule. See Section B, s
22		Pages 7 and 8 of Exhibit 2
23		
24		and Zada's
25		description of it are irrelevant,
26		mischaracterize the documents,
27		lack foundation.
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1			appear to be based on the witness's
2			personal knowledge.
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12	22.	Zada Decl., at ¶ 11	Fed. R. Evid. 401, 402, 403
13			The statements are irrelevant,
. 14			speculative, lack foundation, and
15			mischaracterize the documents
16			referenced (including because
17			Google does have a DMCA policy
18			for AdWords).
19	23.	Zada Decl., at ¶ 12	Fed. R. Evid. 401, 402, 403, 602,
20			1002
21			The statements are argumentative,
22			irrelevant and speculative, constitute
23			improper legal opinion, lack
24			foundation, mischaracterize the
25			documents referenced, and do not
26			appear to be based on the witness's
27			personal knowledge. The
28			
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		GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

statements regarding "The Sample" are irrelevant. See Section C, supra. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lack foundation, and violate the best evidence rule. See Section B, supra. 01980,51320/3091995.1



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2	25.	Zada Decl., at ¶ 12	Fed. R. Evid. 401, 402, 403, 602
3			The statements are irrelevant,
4			speculative, lack foundation,
5			mischaracterize the documents
6			referenced, constitute improper
7			legal opinion and do not appear to
8			be based on the witness's personal
9			knowledge.
10			
11	26.	Zada Decl., at ¶ 12	Fed. R. Evid. 401, 402, 403, 602,
12			701
13			The statements are irrelevant,
14			speculative, lack foundation,
15			mischaracterize the documents
16			referenced (including Google's
17			DMCA instructions), constitute
18			improper legal opinion, do not
19			appear to be based on the witness's
20			personal knowledge, constitute
21			improper opinion testimony of a lay
22			person.
23			
24	27.	Zada Decl. ¶ 13	Fed. R. Evid. 401, 402,403, 1002
25			The statements are argumentative,
26			irrelevant (
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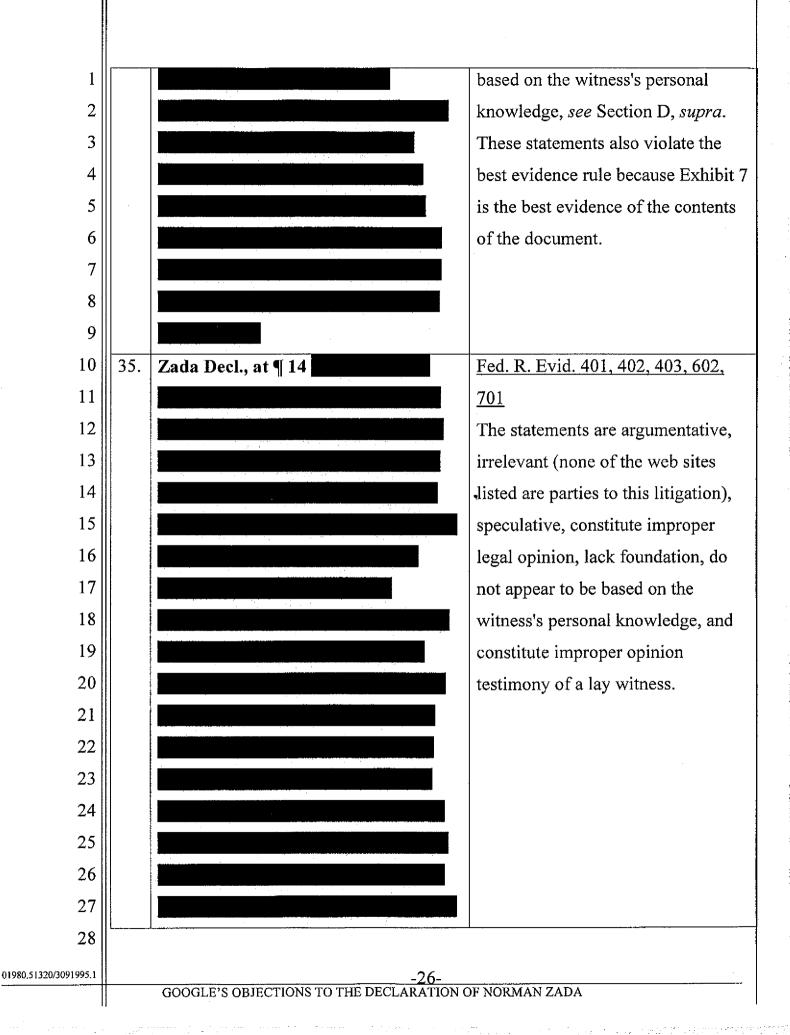
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2			),
3			speculative, constitute improper
4			legal opinion, lack foundation,
5	-		mischaracterize the documents
6			referenced and constitute improper
7			opinion testimony of a lay witness.
8			
9			
10			. See Sections
11			B and D, supra.
12	28.	Zada Decl., at ¶ 14	Fed. R. Evid. 401, 402, 403, 602,
13			801-04, 1002
14			The statements are argumentative,
15			irrelevant, speculative, see Section
16			D, supra, lack foundation,
17			constitutes inadmissible hearsay,
18			and are violative of the best
19			evidence rule.
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		GOOGLE'S OBJECTIONS TO THE DECLARATION O	DF NORMAN ZADA

1	- or - seed and services		
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3	29.	Zada Decl., at ¶ 14	Fed. R. Evid. 401, 402, 403, 602,
4			801-04, 1002
5			The statements are argumentative,
6			irrelevant (because Rapidshare is
7			not a party to this
8			litigation)speculative, see Section D,
9			supra, lack foundation, constitutes
10			inadmissible hearsay, and do not
11			appear to be based on the witness's
12			personal knowledge. These
13			statements also violate the best
14			evidence rule because the article
15			attached as Exhibit 7 is the best
16		•	evidence of the contents of the
17			article.
18			
19			
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22			
23	30.	Zada Decl., at ¶ 14	Fed. R. Evid. 401, 402, 403, 602
24			The statements are argumentative,
25			irrelevant, speculative, see Section
26			D, supra, constitute improper legal
27			opinion, lack foundation,
28			
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	<del> </del>	GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

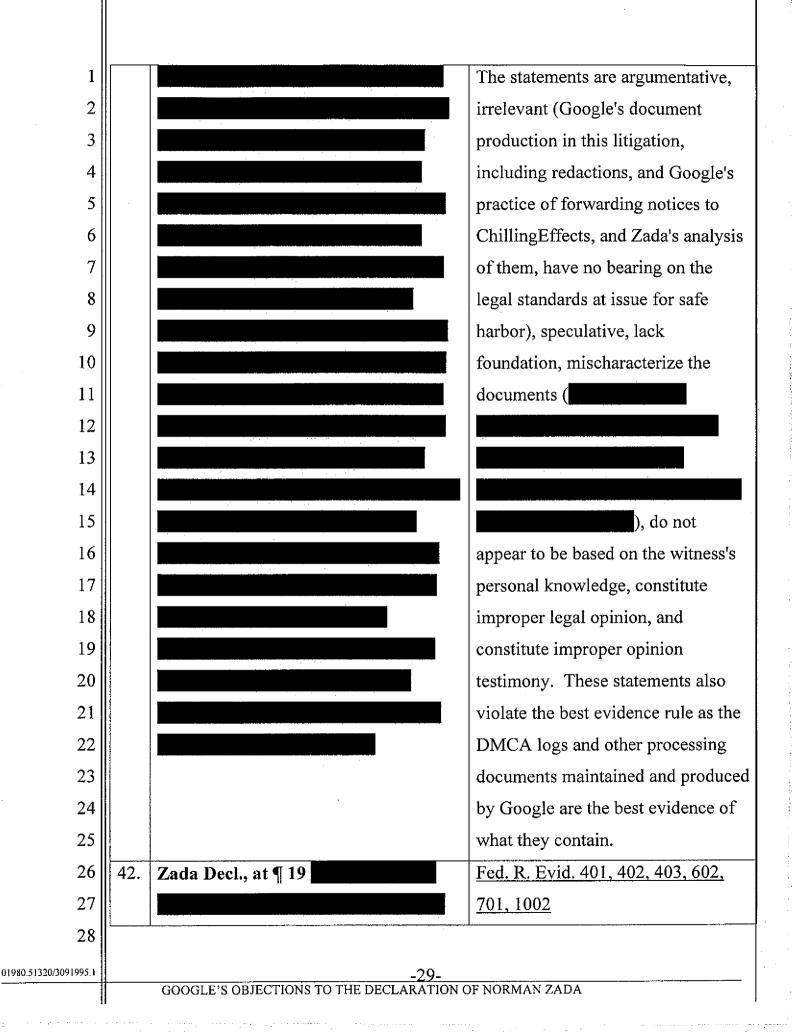
1			mischaracterize the documents, and
2			do not appear to be based on the
3			witness's personal knowledge.
4	-31.	Zada Decl., at ¶ 14	Fed. R. Evid. 401,402, 403, 602,
5			1002
6			The statements are argumentative,
7			irrelevant (Rapidshare is not a party
8			to this litigation, and purported
9			damage to third parties has no
10			bearing on the legal standards at
11			issue for safe harbor, speculative,
12			lack foundation, mischaracterize the
13			documents, and do not appear to be
14			based on the witness's personal
15			knowledge. These statements also
16			violate the best evidence rule
17			because the article attached as
18			Exhibit 7 is the best evidence of the
19			contents of that article.
20	32.	Zada Decl., at ¶ 14	Fed. R. Evid. 401, 402, 403, 602,
21			1002
22			The statements are irrelevant (the
23			various celebrities listed are not
24			Perfect 10 models or parties to this
25			litigation), speculative,
26			mischaracterize the documents, lack
. 27			foundation, and do not appear to be
28		<u> </u>	
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		GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

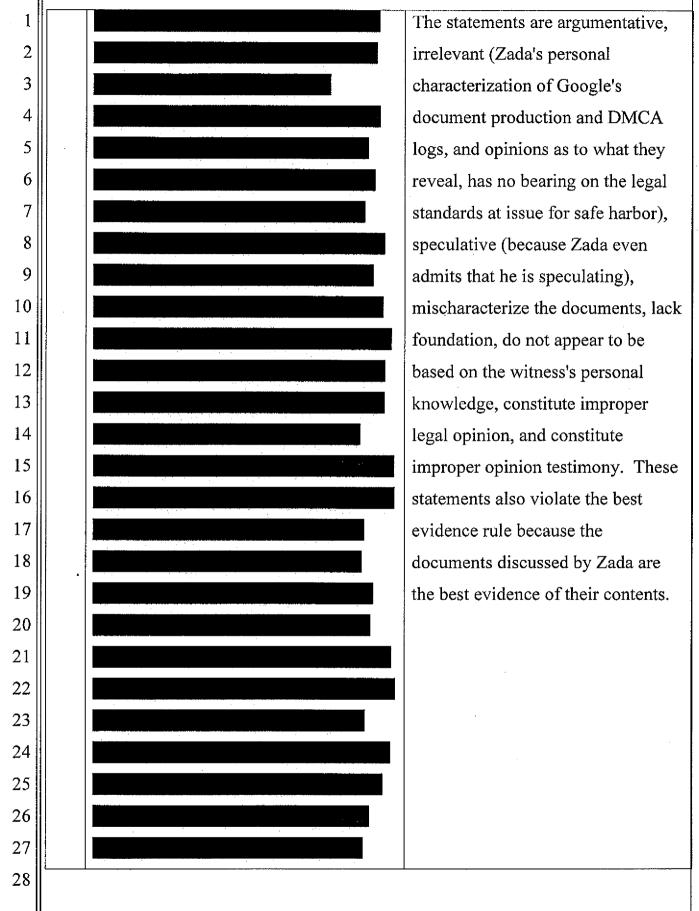
1			based on the witness's personal
2			knowledge. These statements also
3			violate the best evidence rule
4			because Exhibit 7 is the best
5			evidence of the contents of the
6			document.
7	33.	Zada Decl., at ¶ 14	Fed. R. Evid. 401, 402, 403, 602,
8			801-04, 1002
9			The statements are irrelevant
10			(Rapidshare is not a party to this
11			litigation), speculative, lack
12		•	foundation, constitutes inadmissible
13			hearsay, and do not appear to be
14			based on the witness's personal
15			knowledge. These statements also
16		·	violate the best evidence rule
17			because Exhibit 7 is the best
18			evidence of the contents of the
19			document.
20	34.	Zada Decl., at ¶ 14	Fed. R. Evid. 401, 402, 403, 602,
21			801-04, 1002
22			The statements are argumentative,
23			irrelevant (Pirate Bay and its
24			employees are not a party to this
25			litigation), speculative, lack
26			foundation, constitutes inadmissible
27			hearsay, and do not appear to be
28			
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		GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA



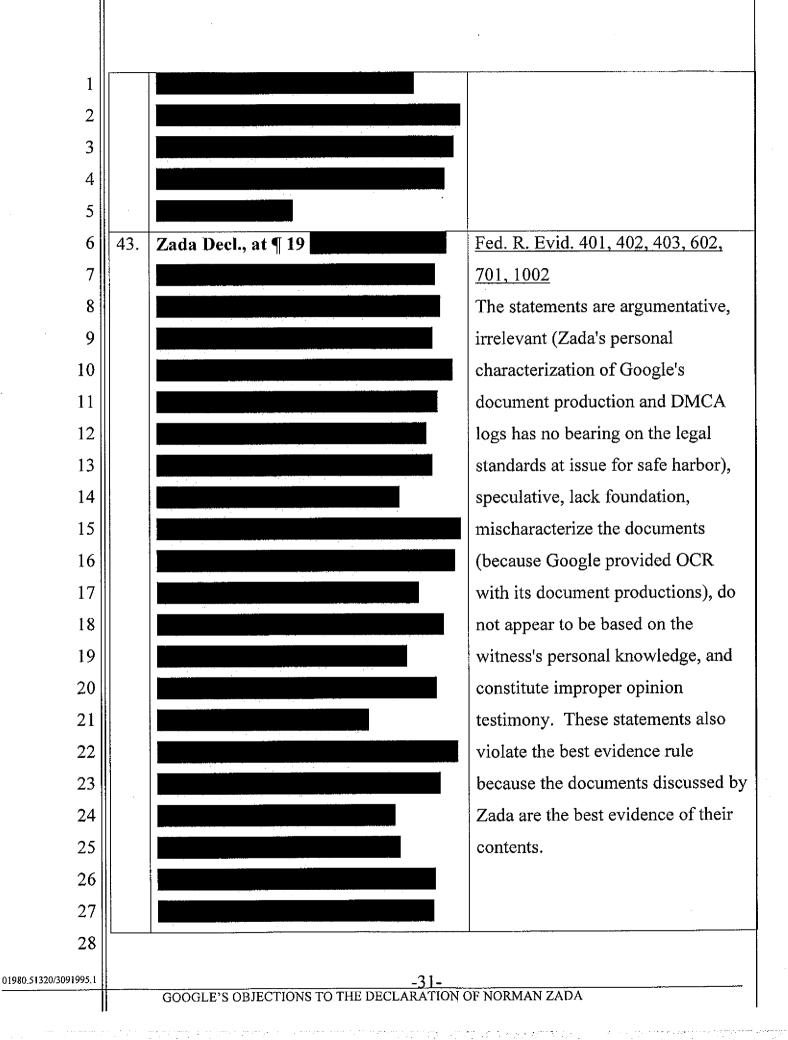
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6	36.	Zada Decl., at ¶ 14	Fed. R. Evid. 401, 402, 403, 602
7			The statements are argumentative,
8			irrelevant, see Section D, supra,
9			speculative, mischaracterize the
10			documents, lack foundation, and do
11			not appear to be based on the
12			witness's personal knowledge.
13			
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17	37.	Zada Decl., at ¶ 15	Fed. R. Evid. 401, 402, 403, 602
18			The statements are irrelevant,
19			speculative, constitute improper
20			legal opinion, mischaracterize the
21			documents, and lack foundation.
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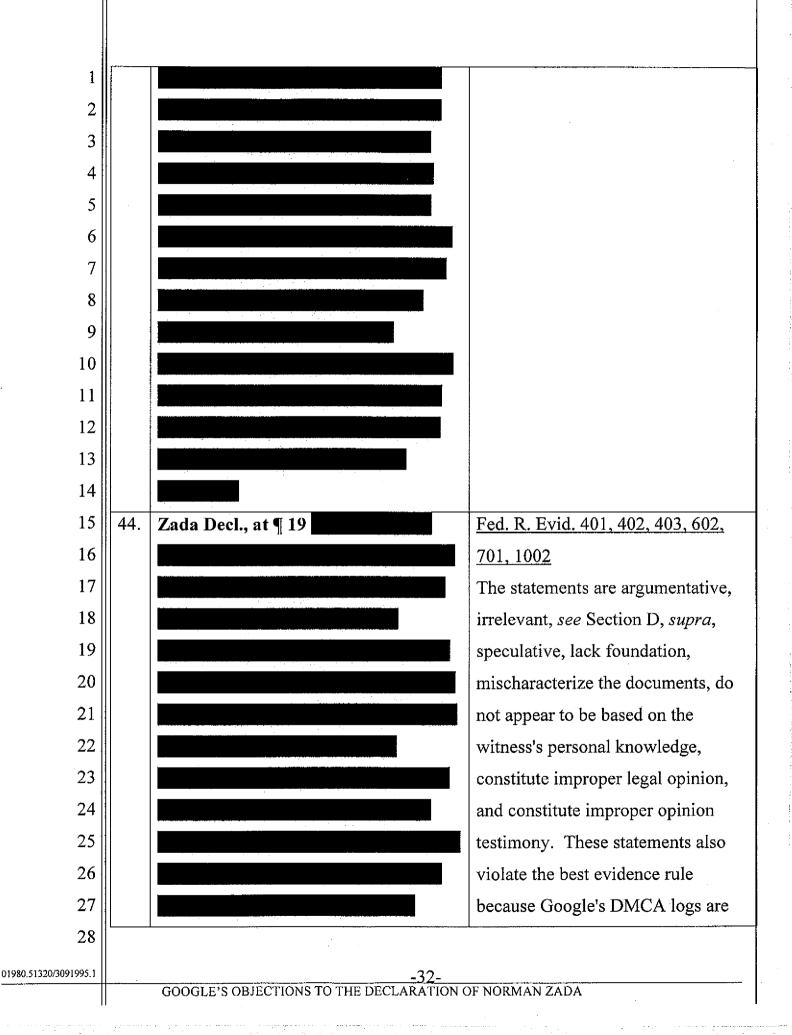
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4	38.	Zada Decl. ¶ 16	Fed. R. Evid. 401, 402, 403, 602
5			The statements are argumentative,
6			irrelevant, speculative,
7			mischaracterize the documents, and
8			lack foundation.
9	39.	Zada Decl., at ¶ 17	Fed. R. Evid. 401, 402, 403, 602
10			The statements are argumentative,
11			irrelevant (Zada's personal
12			assessment of Google's actions has
13			no bearing on the legal standards at
14			issue), speculative, and lack
15			foundation, and do not appear to be
16			based on the witness's personal
17			knowledge.
18	40.	Zada Decl., at ¶ 18	Fed. R. Evid. 401, 402, 403, 602
19			The statements are argumentative,
20			irrelevant (Zada's personal
21		,	assessment of Google's actions has
22	1 1 1 1		no bearing on the legal standards at
23			issue), speculative, lack foundation,
24			and do not appear to be based on the
25			witness's personal knowledge.
26	41.	Zada Decl., at ¶ 19	Fed. R. Evid. 401, 402, 403, 602,
27			701, 1002
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	GOOGLE'S OBJECTIONS TO THE DECLARATION OF NORMAN ZADA		





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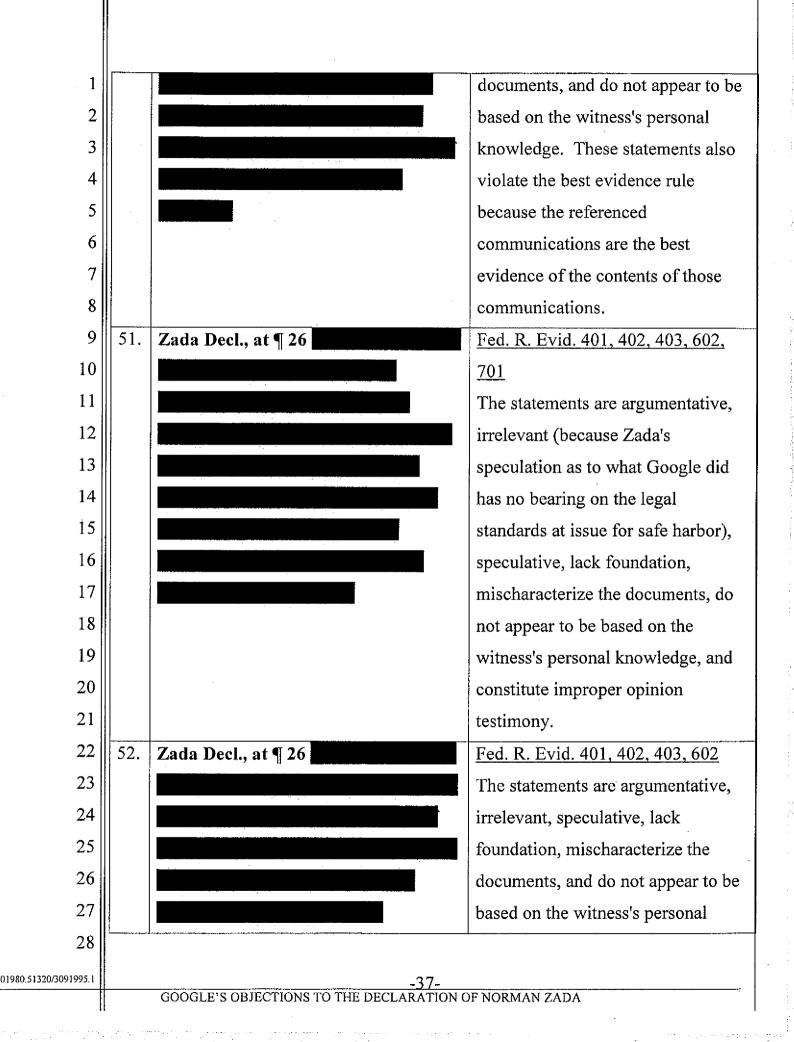


1		the best evidence of their contents.
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24	45. <b>Zada Decl., at ¶ 20</b>	Fed. R. Evid. 401, 402, 403, 602
25		The statements are argumentative,
26		irrelevant (because Zada's personal
27		assessment of Google's actions has
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01980,51320/3091995.1	-33- GOOGLE'S OBJECTIONS TO THE DECLARATION	
	GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

		<u></u>	
1			no bearing on the legal standards at
2			issue), speculative, mischaracterize
3			the documents, lack foundation, and
4		·	do not appear to be based on the
5			witness's personal knowledge.
6	46.	Zada Decl.¶ 21	Fed. R. Evid. 401, 402, 403, 602,
7			701, 1002
8			The statements regarding the
9			cherry-picked excerpts of P10's
10			DMCA Notices also are irrelevant,
11			lacking in foundation, and violative
12			of the best evidence rule. See
13			Section B, supra.
14	47.	Zada Decl., at ¶ 22	Fed. R. Evid. 401, 402, 403, 602,
15	·		801-04, 1002
16			The statements regarding the
17			cherry-picked excerpts of P10's
18			DMCA Notices also are irrelevant,
19			lacking in foundation, and violative
20			of the best evidence rule. See
21			Section B, supra.
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		GOOGLE'S OBJECTIONS TO THE DECLARATION O	OF NORMAN ZADA

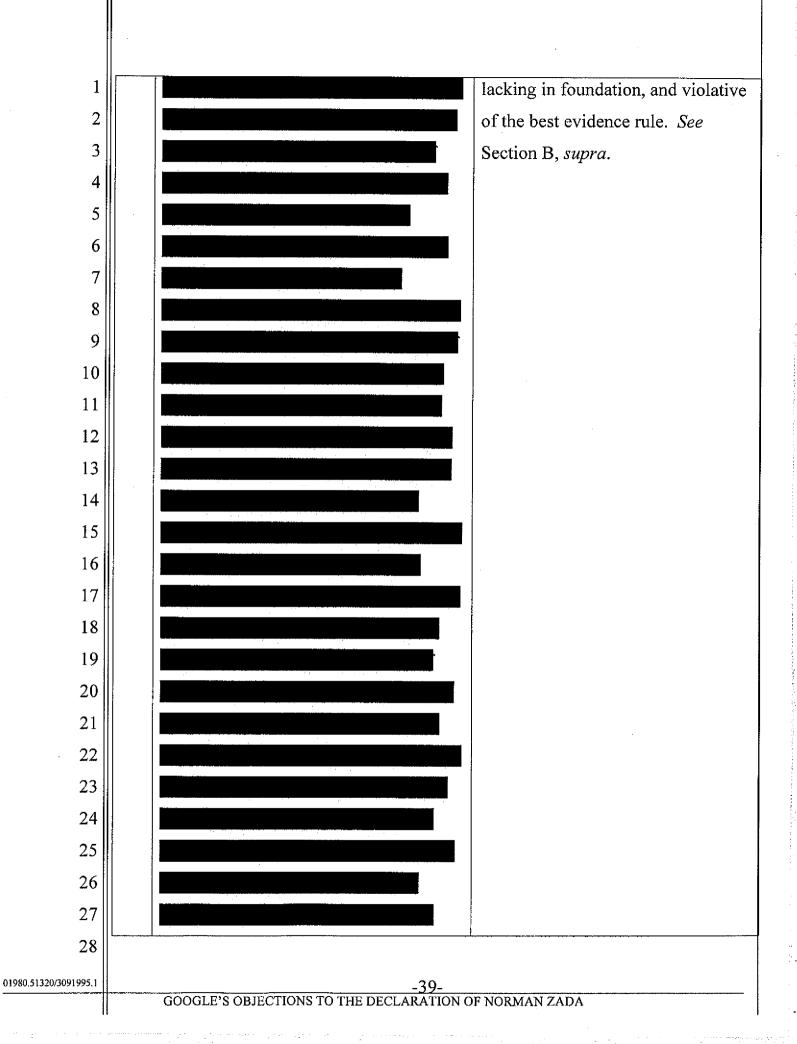
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10	48.	Zada Decl.¶ 23	Fed. R. Evid. 401, 402, 403, 602,
11			701, 1002
12			The statements are argumentative,
13			irrelevant (Zada's subjective
14			assessment of his actions are not
15			relevant to Google's qualification
16			for safe harbor), speculative, lack
17			foundation, constitutes inadmissible
18			hearsay, do not appear to be based
19	il .		on the witness's personal
20			knowledge, constitute improper
21			legal opinion, and constitute
22			improper opinion testimony. The
23			statements also violate the best
24			evidence rule, in that the purported
25			exhibits themselves are the best
26			evidence of their contents.
27	49.	Zada Decl. ¶ 24	Fed. R. Evid. 401, 402, 403, 602,
28	<u> </u>		
01980,51320/3091995.1		-35-	
		GOOGLE'S OBJECTIONS TO THE DECLARATION O	DF NORMAN ZADA

1 701 The statements are argumentative, 3 irrelevant (Dr. Zada's personal 4 views on how best to present 5 DMCA notices have no bearing on the legal standards at issue for safe 6 harbor), speculative, lack 8 foundation, do not appear to be based on the witness's personal 10 knowledge, constitute improper 11 legal opinion, and constitute 12 improper opinion testimony. The 13 statements regarding the cherry-14 picked excerpts of P10's DMCA 15 Notices also are irrelevant, lacking 16 in foundation, and violative of the 17 best evidence rule. See Section B, 18 supra. 19 50. Zada Decl., at ¶ 25 Fed. R. Evid. 401, 402, 403, 602, 20 1002 21 The statements are argumentative, 22 irrelevant (because attempts by 23 Google to try to process P10's 24 notices are not probative of whether 25 the notices complied with the DMCA), speculative, lack 26 27 foundation, mischaracterize the 28 01980.51320/3091995.1



1			knowledge.
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4	53.	Zada Decl., at ¶ 26	Fed. R. Evid. 401, 402, 403, 602,
5			<u>701</u>
6			The statements are irrelevant
7			(Zada's personal opinion on how he
8			would have handled DMCA review
9			process has no bearing on the legal
10			standards at issue), speculative, lack
11			foundation, do not appear to be
12			based on the witness's personal
13			knowledge, and constitute improper
14			opinion testimony.
15	54.	Zada Decl., at ¶ 26	Fed. R. Evid. 401, 402, 403, 602,
16			1002
17			The statements are irrelevant,
18			because Google's pending motions
19			are not directed to examples of
20			images P10 references, but to the
21			entirety of P10's copyright claims.
22			See also Section D, supra. The
23			statements regarding "The Sample"
24			are irrelevant. See Section C, supra.
25			The statements regarding the
26			cherry-picked excerpts of P10's
27			DMCA Notices also are irrelevant,
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1995.1		-38-	
		GOOGLE'S OBJECTIONS TO THE DECLARATION (	OF NORMAN ZADA

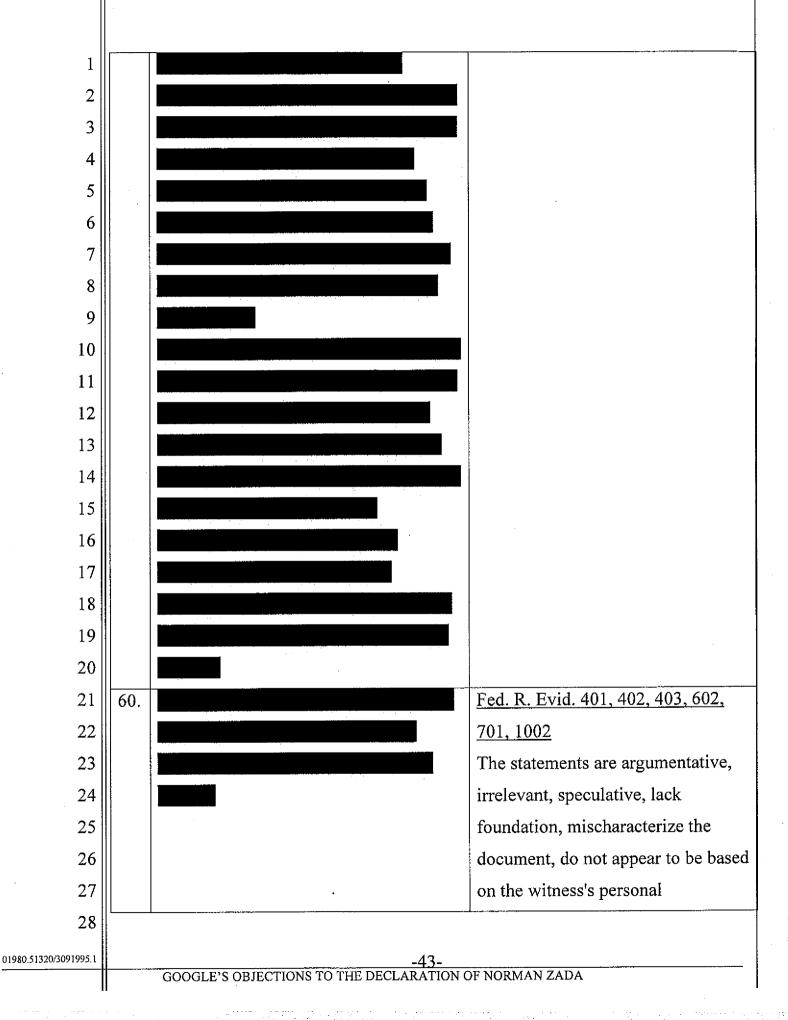
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10	55.	Zada Decl., at ¶ 26	Fed. R. Evid. 401, 402, 403, 602,
11			<u>701</u>
12			The statements are irrelevant,
13			speculative, lack foundation
14	e E		(because Zada fails to establish that
15	1		he understands the requirements of a
16		· · · · · ·	proper DMCA notice), and
17			constitute improper opinion
18		•	testimony.
19	56.	Zada Decl., at ¶ 26	Fed. R. Evid. 401, 402, 403, 602,
20			1002
21			The statements are argumentative,
22			irrelevant, see Section D, supra,
23			speculative, mischaracterize the
24			documents, and lack foundation.
25			These statements also violate the
26			best evidence rule because Exhibit
27			14 is the best evidence of its
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		GOOGLE'S OBJECTIONS TO THE DECLARATION C	F NORMAN ZADA

1		contents.
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5	57. Zada Decl., at ¶ 26	Fed. R. Evid. 401, 402, 403, 602,
6		701, 1002
7		The statements are argumentative,
8		irrelevant (because Zada's
9		speculation
10		has no bearing on
11		the legal standards at issue for safe
12		harbor), speculative, lack
13		foundation, mischaracterize the
14		documents, do not appear to be
15		based on the witness's personal
16		knowledge, and constitute improper
17		opinion testimony. These
18		statements also violate the best
19		evidence rule because the click data
20		referenced by Zada is the best
21		evidence of that data.
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23		
24	58. Zada Decl. ¶ 27	Fed. R. Evid. 401, 402, 403, 602,
25		<u>701</u>
26		The statements are argumentative,
27		constitute improper legal opinion,
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	GOOGLE'S OBJECTIONS TO THE DECLARATION C	OF NORMAN ZADA

and irrelevant (Zada's personal 1 opinion as to the speed with which Google reacted has no bearing on 3 the legal standards at issue for safe harbor). The statements regarding 5 "The Sample" are irrelevant. See 6 7 Section C, supra. The statements regarding the cherry-picked excerpts 8 of P10's DMCA Notices also are 10 irrelevant, lacking in foundation, and violative of the best evidence 11 rule. See Section B, supra. 12 13 59. Zada Decl., at ¶ 28 Fed. R. Evid. 401, 402, 403, 602 14 The statements are argumentative, 15 irrelevant, see Section D, supra, 16 speculative, lack foundation, 17 mischaracterize the documents, 18 constitute improper legal opinion, 19 and do not appear to be based on the 20 witness's personal knowledge. 21 22 23 24 25 26 27 28 01980.51320/3091995.1



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1			knowledge, constitute improper
2			legal opinion, and constitute
3			improper opinion testimony.
4	61.		Fed. R. Evid. 401, 402, 403, 602,
5			701, Fed. R. Civ. P. 37(c)(1)
6			The statements are argumentative,
7			irrelevant (because Google does not
8			crawl or link to content on Usenet
9			sites or other password-protected
10			websites, Haahr Dec. ¶¶ 14-15, see
11			also Section D, supra"), speculative
12			lack foundation, do not appear to be
13			based on the witness's personal
14			knowledge, constitute improper
15			legal opinion, and constitute
16			improper opinion testimony of a lay
17			witness. Further, having failed to
18			produce complete and unredacted
19			financial records, P10 may not
20	ļ		assert its alleged financial
21		,	information here.
22	62.	Zada Decl., at ¶ 33	Fed. R. Evid. 401, 402, 403, 602,
23			<u>701</u>
24			The statements are argumentative,
25			irrelevant (Google does not crawl or
26			link to content on Usenet sites or
27			other password-protected websites.
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95.1		-44- GOOGLE'S OBJECTIONS TO THE DECLARATION O	

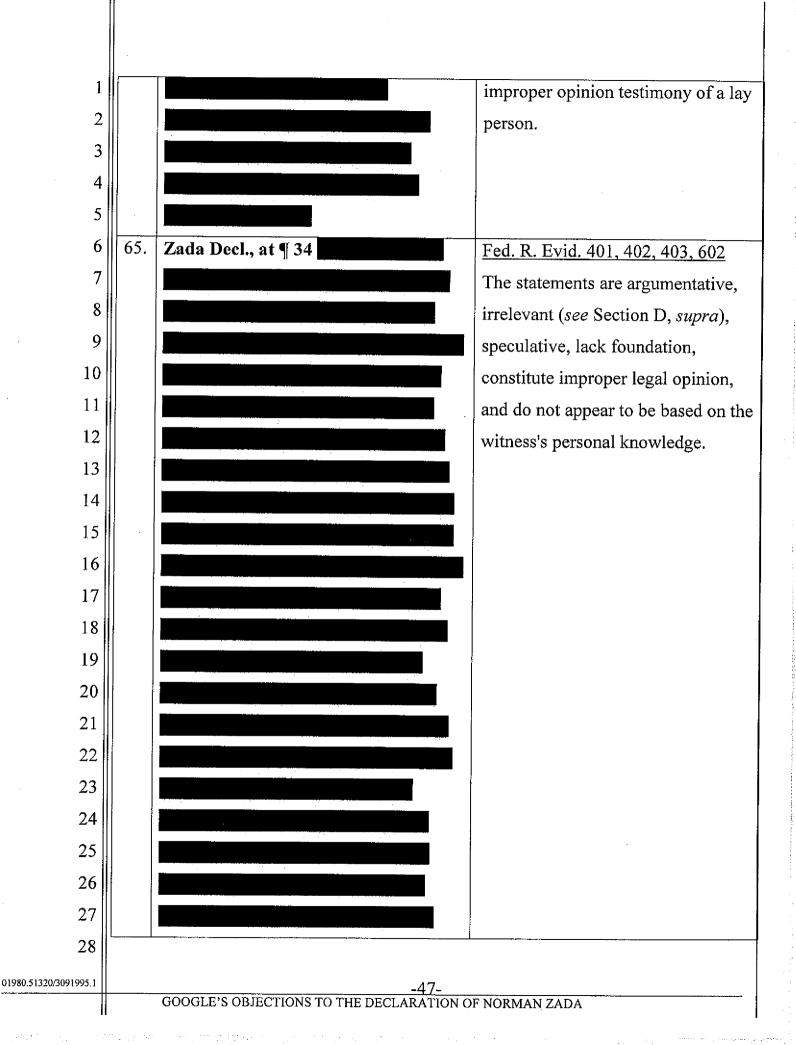
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Haahr Dec. ¶¶ 14-15, see also Section D, supra), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony. 

GOOGLE'S OBJECTIONS TO THE DECLARATION OF NORMAN ZADA

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3	63.	Zada Decl., at ¶ 33	Fed. R. Evid. 401, 402, 403, 602,
4			701
5			The statements are irrelevant
6			(because Zada's opinion as to
7			whether P10 could continue sending
8			spreadsheet type notices has no
9			bearing on the legal standards at
10			issue for safe harbor), speculative,
11			lack foundation, do not appear to be
12			based on the witness's personal
13			knowledge, and constitute improper
14	:		opinion testimony.
15	64.	Zada Decl., at ¶ 34	Fed. R. Evid. 401, 402, 403, 602,
16			701,702
17			The statements are argumentative,
18			irrelevant (see Section D, supra),
19			unduly prejudicial (P10 seeks to
20			avoid its defective DMCA notices
21			by referencing content it does not
22			own on sites Google does not crawl
23			or link to), speculative, lack
24			foundation, do not appear to be
25			based on the witness's personal
26			knowledge, constitute improper
27			legal opinion, and constitute
28			
01980,51320/3091995,1		-46-	
		GOOGLE'S OBJECTIONS TO THE DECLARATION (	DF NORMAN ZADA

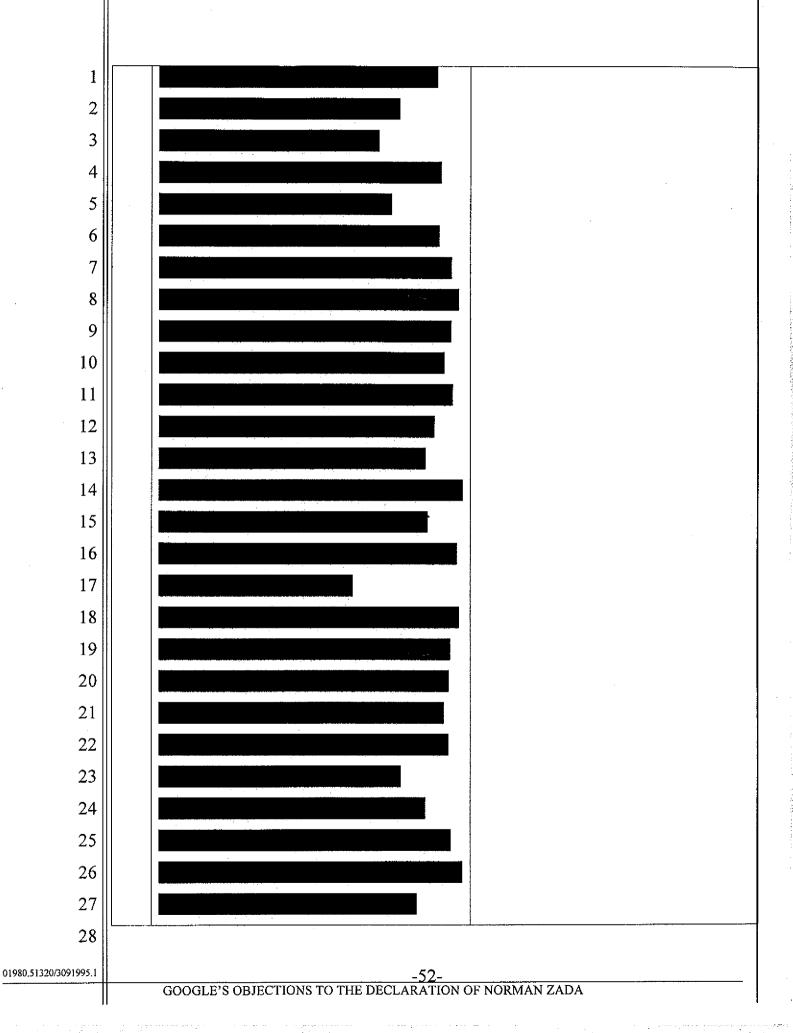


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19	66.	Zada Decl. ¶ 35	Fed. R. Evid. 401, 402, 403, 602,
20			702
21			The statements are argumentative,
22			irrelevant (Google does not crawl or
23			link to content on Usenet sites or
24			other password-protected websites,
25			Haahr Dec. ¶¶ 14-15, and Zada's
26			personal opinions regarding how
27			Google should process DMCA
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01980.51320/3091995.1		-48-	, v
		GOOGLE'S OBJECTIONS TO THE DECLARATION O	DF NORMAN ZADA

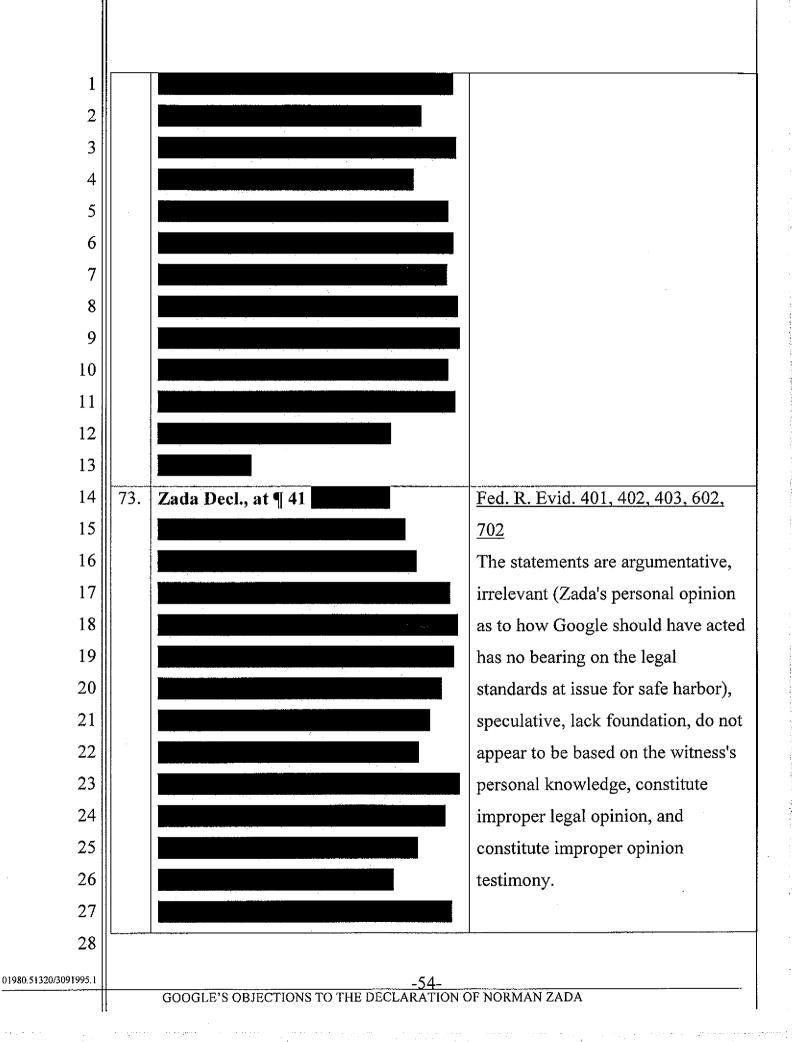
notices have no bearing on the legal 1 2 standards at issue for safe harbor). 3 speculative, lack foundation, constitute improper legal opinion, 4 5 do not appear to be based on the 6 witness's personal knowledge and constitute improper opinion 8 testimony. 9 Fed. R. Evid. 401, 402, 403, 602, 67. Zada Decl., at ¶ 36 10 701, 702 11 The statements are argumentative, 12 irrelevant (see Section D, supra), 13 unduly prejudicial (because P10 14 seeks to sidestep its defective 15 DMCA notices by pointing to 16 content it does not own and that is 17 not crawled or linked to by Google), 18 speculative, lack foundation, do not 19 appear to be based on the witness's 20 personal knowledge, constitute 21 improper legal opinion, and 22 constitute improper opinion 23 testimony of a lay witness. Zada 24 has not been designated as an expert 25 witness in this case, nor has be 26 presented sufficient foundation to 27 support any claimed expertise in the 28 01980.51320/3091995.1 GOOGLE'S OBJECTIONS TO THE DECLARATION OF NORMAN ZADA

1			referenced subjects.
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15	68.	Zada Decl. ¶ 37	Fed. R. Evid. 401, 402, 403, 602,
16			701
17			The statements are argumentative,
18			irrelevant, speculative, lack
19			foundation, do not appear to be
20			based on the witness's personal
21			knowledge, constitute improper
22			legal opinion, and constitute
23			improper opinion testimony.
24	69.	Zada Decl., at ¶ 38	Fed. R. Evid. 401, 402, 403, 602
25		Zava Deci., at    50	The statements are argumentative,
26			_
27			irrelevant, speculative, constitute
28			improper legal opinion, and lack
01980.51320/3091995.1		-50- GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA
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. 1		foundation.
2	70. Zada Decl., at ¶ 39	Fed. R. Evid. 401, 402, 403, 602,
3		<u>701</u>
4		The statements are irrelevant
5		(because Google's refreshing of
6		cached links has no bearing on the
. 7		legal standards at issue for safe
8		harbor if Google did not receive
9		DMCA-compliant notices of
10		infringement), speculative, lack
11		foundation, mischaracterize the
12		documents referenced, do not
13		appear to be based on the witness's
14		personal knowledge, constitute
15		improper legal opinion, and
16		constitute improper opinion
17		testimony.
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	GOOGLE'S OBJECTIONS TO THE DECLARATION (	OF NORMAN ZADA



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2	71.	Zada Decl., at ¶ 40	Fed. R. Evid. 401, 402, 403, 602,
3			701
4			The statements regarding the
5			cherry-picked excerpts of P10's
6			DMCA Notices are irrelevant,
7			lacking in foundation, constitute
8			improper legal opinion, and
9			violative of the best evidence rule.
10			See Section B, supra
11			
12	72.	Zada Decl., at ¶ 41	Fed. R. Evid. 401, 402, 403, 602,
13			702
14			The statements are argumentative,
15			irrelevant (Zada's personal opinion
16			as to how Google should have acted
17			has no bearing on the legal
18			standards at issue), speculative, lack
19			foundation, mischaracterize the
20			documents, do not appear to be
21			based on the witness's personal
22			knowledge and constitute improper
23			opinion testimony.
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		GOOGLE'S OBJECTIONS TO THE DECLARATION O	OF NORMAN ZADA



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3	74.	Zada Decl., at ¶ 42	Fed. R. Evid. 401, 402, 403, 602,
4			1002
5			The statements regarding "The
6			Sample" are irrelevant. See Section
7			C, supra. The statements regarding
8			the cherry-picked excerpts of P10's
9			DMCA Notices also are irrelevant,
10			lacking in foundation, and violative
11			of the best evidence rule. See
12			Section B, supra
13	75.	Zada Decl., at ¶ 43	Fed. R. Evid. 401, 402, 403, 602
14			The statements regarding "The
15			Sample" are irrelevant. See Section
16			C, supra. The statements regarding
17			the cherry-picked excerpts of P10's
18			DMCA Notices also are irrelevant,
19			lacking in foundation, and violative
20			of the best evidence rule. See
21			Section B, supra
22	76.	Zada Decl., at ¶ 44	Fed. R. Evid. 401, 402, 403, 602,
23			1002
24			The statements regarding "The
25			Sample" are irrelevant. See Section
26			C, supra. The statements regarding
27			the cherry-picked excerpts of P10's
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		GOOGLE'S OBJECTIONS TO THE DECLARATION O	DF NORMAN ZADA

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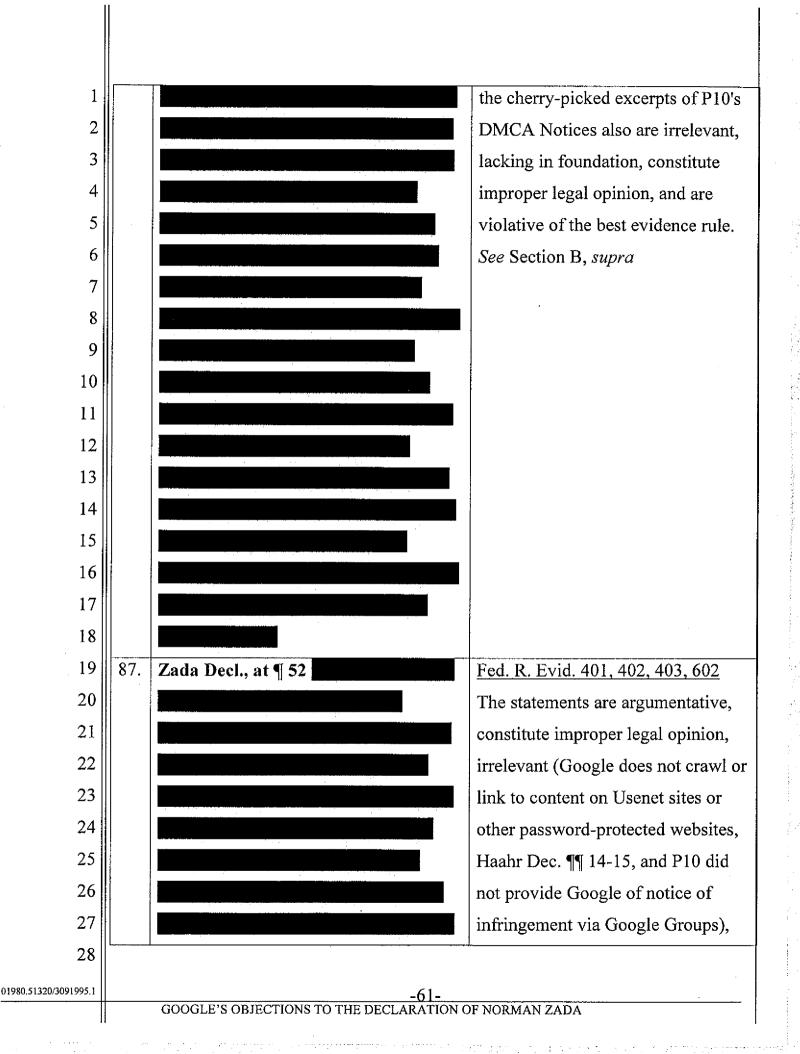
1			DMCA Notices also are irrelevant,
2			lacking in foundation, and violative
3			of the best evidence rule. See
4			Section B, supra
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11	77.	Zada Decl., at ¶ 45	Fed. R. Evid. 401, 402, 403, 602,
12			1002
13			The statements regarding "The
14			Sample" are irrelevant. See Section
15			C, supra. The statements regarding
16			the cherry-picked excerpts of P10's
17			DMCA Notices also are irrelevant,
18			lacking in foundation, constitute
19			improper legal opinion, and
20			violative of the best evidence rule.
21			See Section B, supra
22	78.	Zada Decl., at ¶ 46	Fed. R. Evid. 401, 402, 403, 602,
23			<u>1002</u>
24			The statements regarding "The
25			Sample" are irrelevant. See Section
26			C, supra. The statements regarding
27			the cherry-picked excerpts of P10's
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01980.51320/3091995.1		-56-	
		GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

1		DMCA Notices also are irrelevant,
2		lacking in foundation, and violative
3		of the best evidence rule. See
4		Section B, supra
5	79. <b>Zada Decl., at ¶ 47</b>	Fed. R. Evid. 401, 402, 403, 602,
6		<u>701, 1002</u>
7		The statements regarding "The
8		Sample" are irrelevant. See Section
9		C, supra. The statements regarding
10		the cherry-picked excerpts of P10's
11		DMCA Notices also are irrelevant,
12		lacking in foundation, and violative
13		of the best evidence rule. See
14		Section B, supra
15	80. Zada Decl., at ¶ 48	Fed. R. Evid. 401, 402, 403, 602,
16		1002
17		The statements regarding "The
18		Sample" are irrelevant. See Section
19		C, supra. The statements regarding
20		the cherry-picked excerpts of P10's
21		DMCA Notices also are irrelevant,
22		lacking in foundation, and violative
23		of the best evidence rule. See
24		Section B, supra
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	GOOGLE'S OBJECTIONS TO THE DECLARATION (	OF NORMAN ZADA

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6	81.	Zada Decl., at ¶ 49	Fed. R. Evid. 401, 402, 403, 602,
7			1002
8			The statements regarding "The
9			Sample" are irrelevant. See Section
10			C, supra. The statements regarding
11			the cherry-picked excerpts of P10's
12			DMCA Notices also are irrelevant,
13			lacking in foundation, constitute
14			improper legal opinion, and
15			violative of the best evidence rule.
16			See Section B, supra
17	82.	Zada Decl., at ¶ 49	Fed. R. Evid. 401, 402, 403, 602
.18			The statements are irrelevant (see
19			Section D, supra), speculative, lack
20			foundation, and do not appear to be
21			based on the witness's personal
22			knowledge.
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		GOOGLE'S OBJECTIONS TO THE DECLARATION C	DF NORMAN ZADA

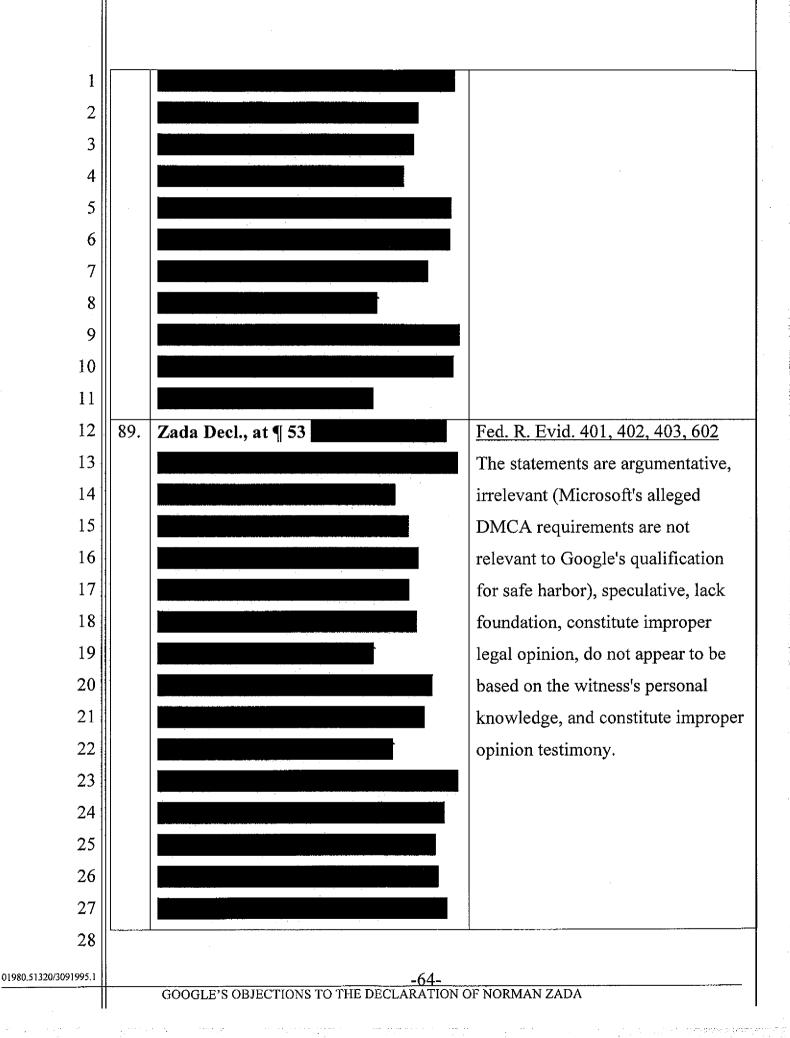
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3	83.	Zada Decl., at ¶ 50	Fed. R. Evid. 401, 402, 403, 602
4			The statements are argumentative,
5			irrelevant, see Section D, supra,
6			speculative, lack foundation, and do
7			not appear to be based on the
8			witness's personal knowledge.
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15	84.	Zada Decl., at ¶ 50	Fed. R. Evid. 401, 402, 403, 602
16			The statements are irrelevant (that
17			an image was displayed at URLs
18			other than those identified by P10 in
19			its notices to Google has no bearing
20			on the legal standards at issue for
21			safe harbor), speculative, lack
22			foundation, constitute improper
23			legal opinion, and do not appear to
24			be based on the witness's personal
25			knowledge.
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		GOOGLE'S OBJECTIONS TO THE DECLARATION (	OF NORMAN ZADA

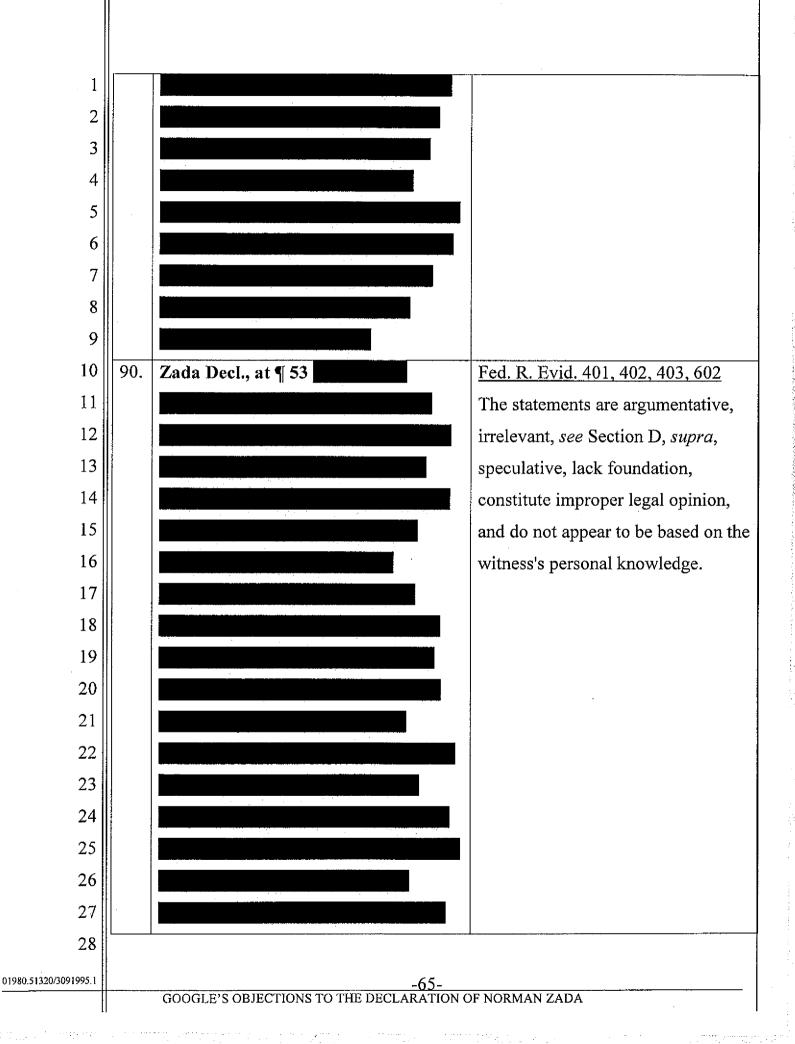
					regarded to the second of the	
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2	85. <b>Zada</b>	a Decl., at ¶ 51		Fed. R	L. Evid. 401, 402, 403, 602	<u>′•</u>
3				<u>701</u>		
4				The sta	atements are argumentativ	e,
5				irrelev	ant, speculative, lack	
6				founda	ation, mischaracterize the	
7				docum	nents, do not appear to be	
8				based	on the witness's personal	
9				knowl	edge, and constitute impro	per
10				opinio	n testimony.	
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23	86. <b>Zad</b> :	a Decl., at ¶ 51		Fed. R	R. Evid. 401, 402, 403, 602	) <u>"1</u>
24				702, 1	002	
25				The st	atements regarding "The	
26			; 	Sampl	le" are irrelevant. See Sec	tion
27				C, sup	ora. The statements regard	ling
28						
01980.51320/3091995.1			-60-			
	. G00	GLE'S OBJECTIONS TO	O THE DECLARATION	ON OF NORM	IAN ZADA	



1		unduly prejudicial. The statements
2		regarding "The Sample" are
3		irrelevant. See Section C, supra.
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26	88. Zada Decl., at ¶ 53	Fed. R. Evid. 401, 402, 403, 602
27		The statements are irrelevant
28		
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	GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

(Zada's personal characterization of his actions has no bearing on the legal standards at issue), speculative, lack foundation, mischaracterize the documents, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge. 01980.51320/3091995.1 -63-GOOGLE'S OBJECTIONS TO THE DECLARATION OF NORMAN ZADA

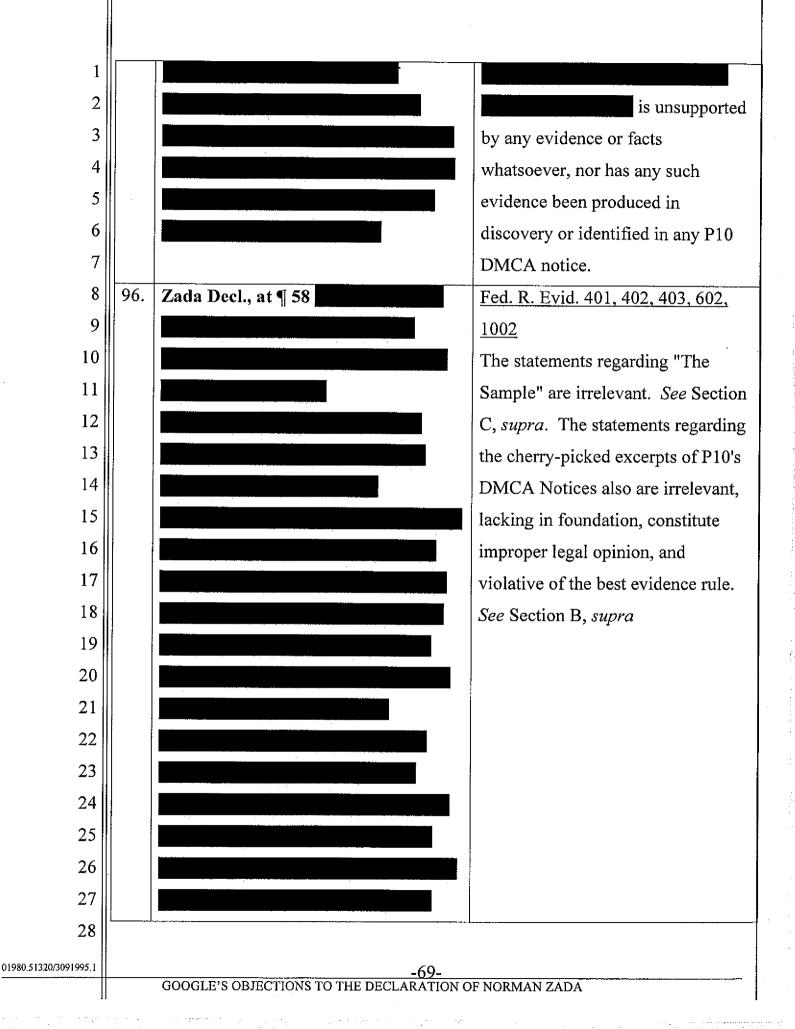


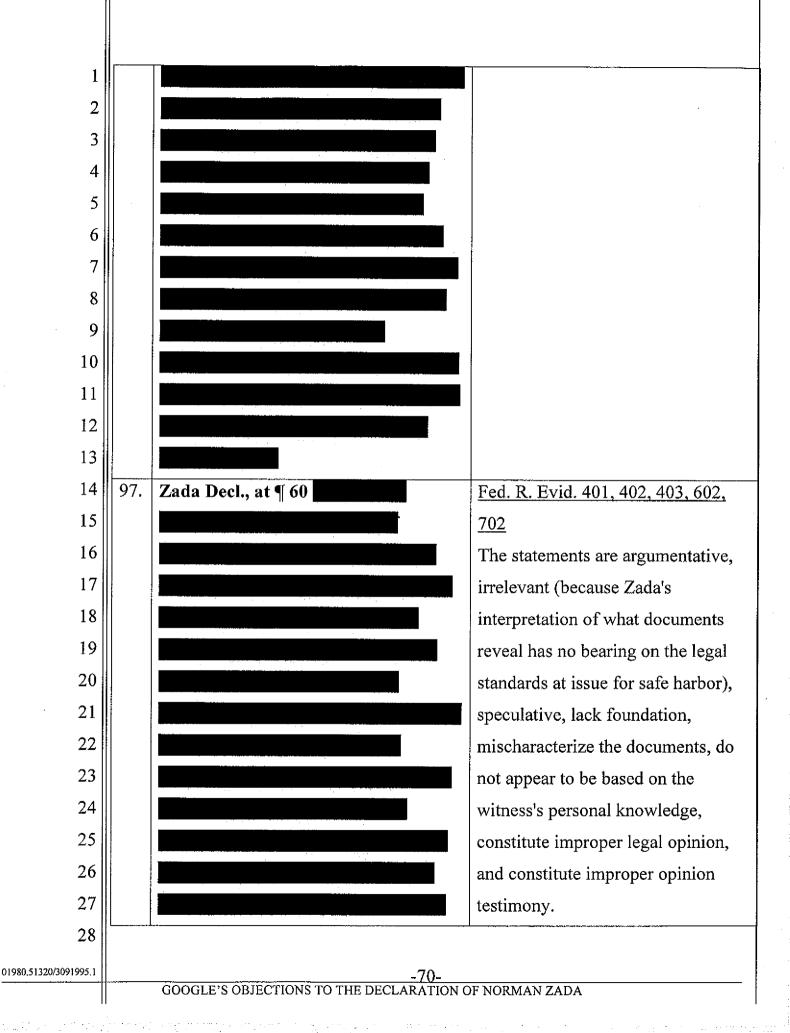


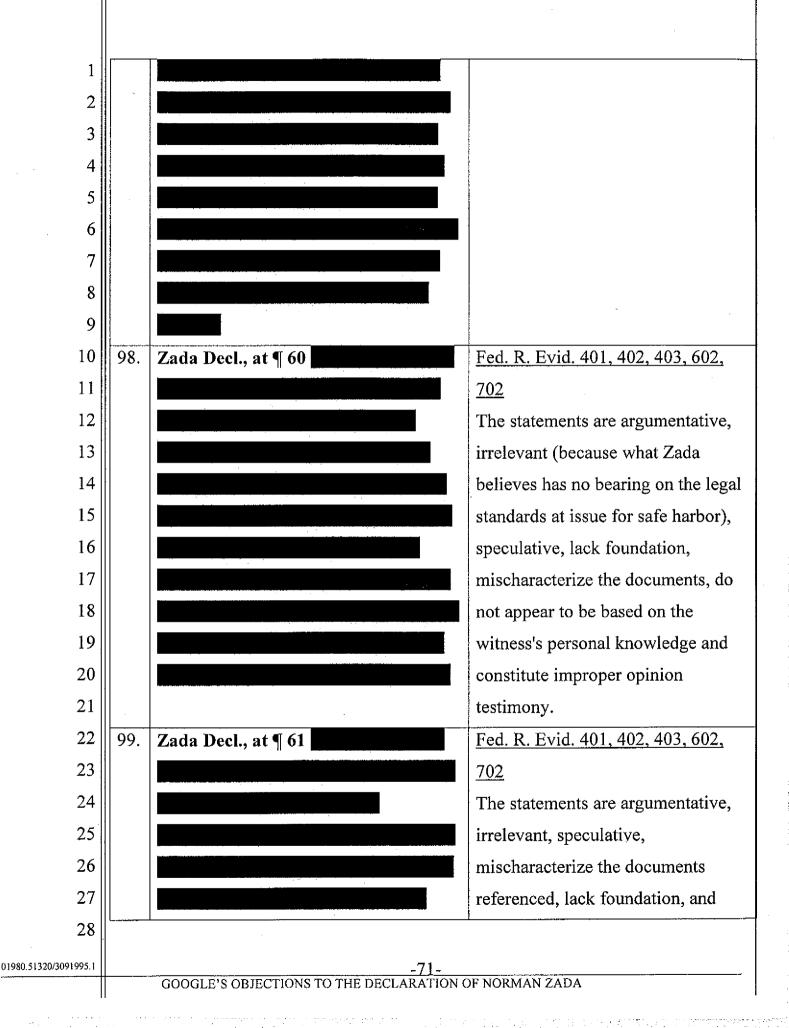
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7	91.	Zada Decl. ¶ 54	Fed. R. Evid. 401, 402, 403, 602,
- 8			702
9			The statements are argumentative,
10			irrelevant (Dr. Zada's beliefs as to
11			what Google does or does not need
12			to remove an image from Image
13			Search have no bearing on the legal
14			standards at issue), speculative, lack
15			foundation, mischaracterize the
16			documents, do not appear to be
17			based on the witness's personal
18			knowledge constitute improper legal
19			opinion, and constitute improper
20			opinion testimony.
21	92.	Zada Decl., at ¶ 55	Fed. R. Evid. 401, 402, 403, 602
22			The statements are argumentative,
23			irrelevant, speculative, lack
24			foundation, constitute improper
25			legal opinion, and do not appear to
26			be based on the witness's personal
27			knowledge.
28			
01980.51320/3091995.1		-66-	
		GOOGLE'S OBJECTIONS TO THE DECLARATION C	OF NORMAN ZADA

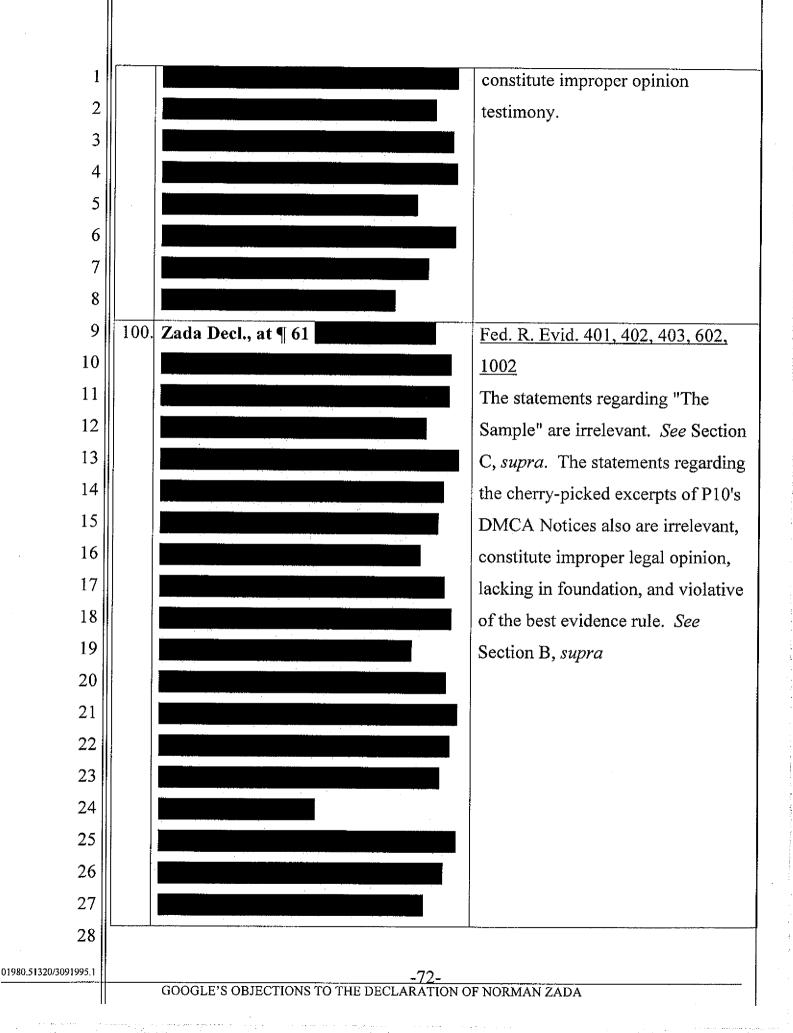
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27	93.	Zada Decl.¶ 57	•	Fed. R. Evid. 401, 402, 403, 602,	
28					
01980.51320/3091995.1		GOOGLE'S OBJECTIONS TO	-67-	E NODMAN ZADA	
ļ		GOOGLE & OBJECTIONS TO	THE DECLARATION O	P NOKMAN ZADA	

1			701, 1002
2			The statements are irrelevant,
3			speculative, lack foundation,
4			mischaracterize the documents, do
5			not appear to be based on the
6			witness's personal knowledge,
7	:		constitute improper legal opinion,
8			and are improper opinion testimony.
9	94.	Zada Decl., at ¶ 58	Fed. R. Evid. 401, 402, 403, 602,
10			701
11			The statements are argumentative,
12			irrelevant, speculative, lack
13			foundation, do not appear to be
14			based on the witness's personal
15			knowledge, constitute improper
16			legal opinion, and constitute
17			improper opinion testimony.
18	95.	Zada Decl., at ¶ 58	Fed. R. Evid. 401, 402, 403, 602
19			The statements are irrelevant (see
20			Section D, supra), argumentative,
21			constitute improper legal opinion,
22			speculative, do not appear to be
23	1 :		based on the witness's personal
24			knowledge, and lack foundation.
25			For instance, Zada's claim
26			
27			
28	<del>                                   </del>		
01980.51320/3091995.1		-68-	
		GOOGLE'S OBJECTIONS TO THE DECLARATION C	OF NORMAN ZADA

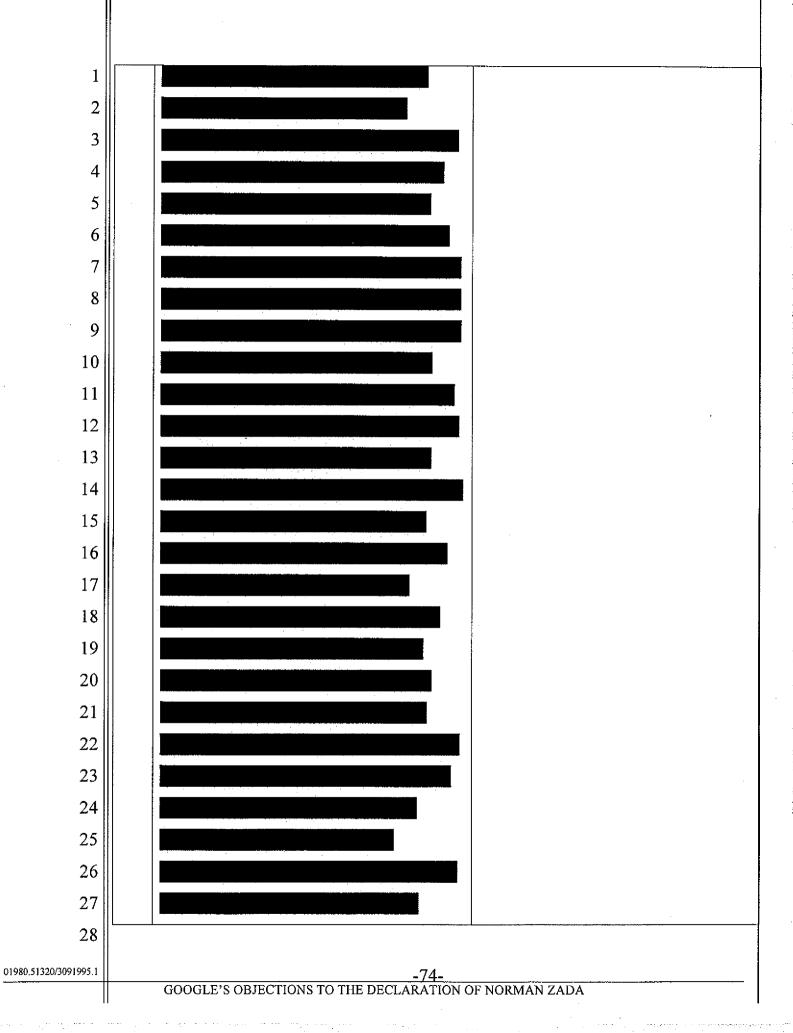


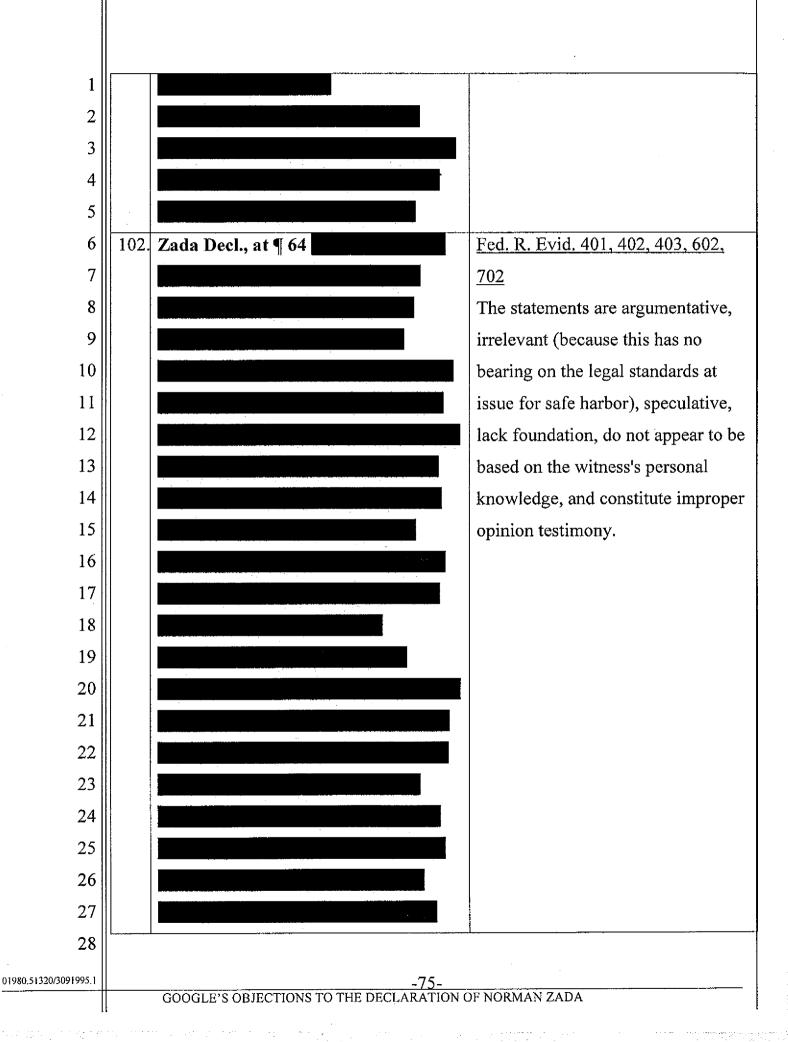


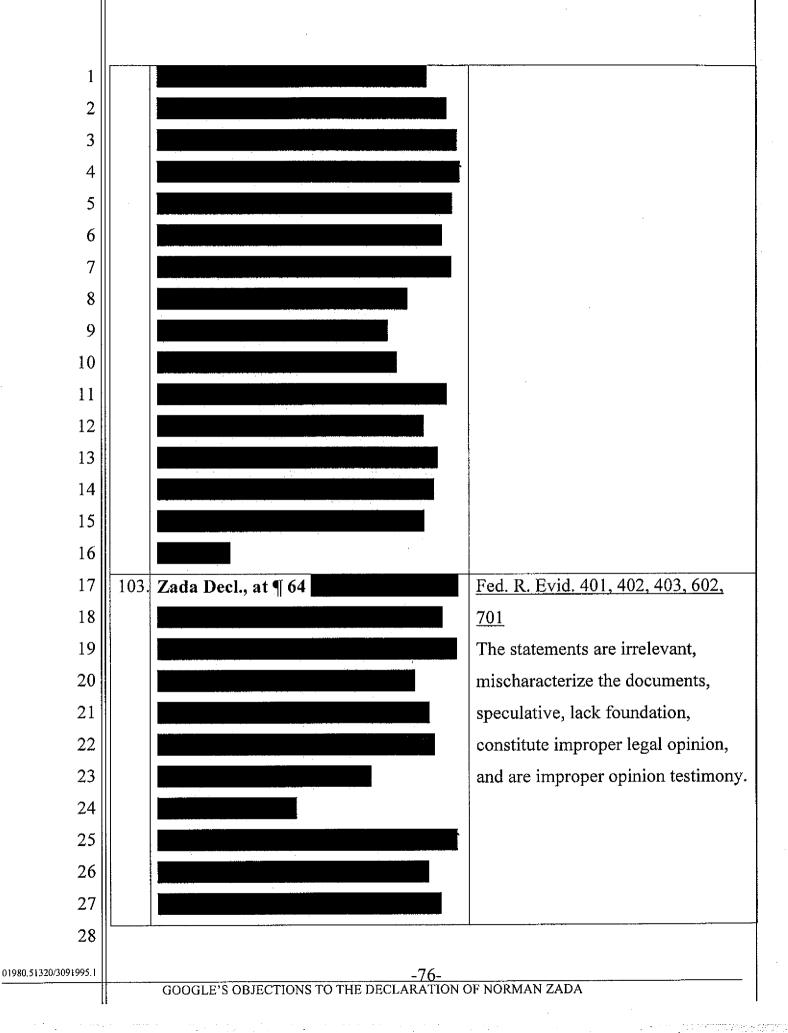


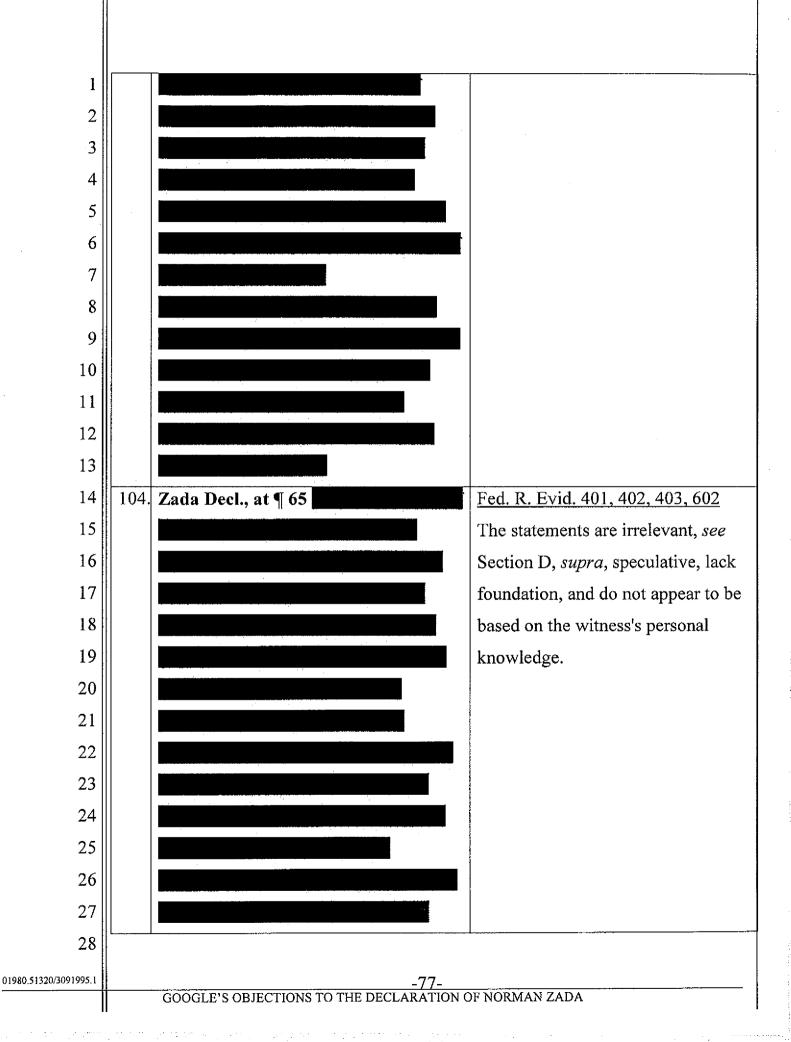


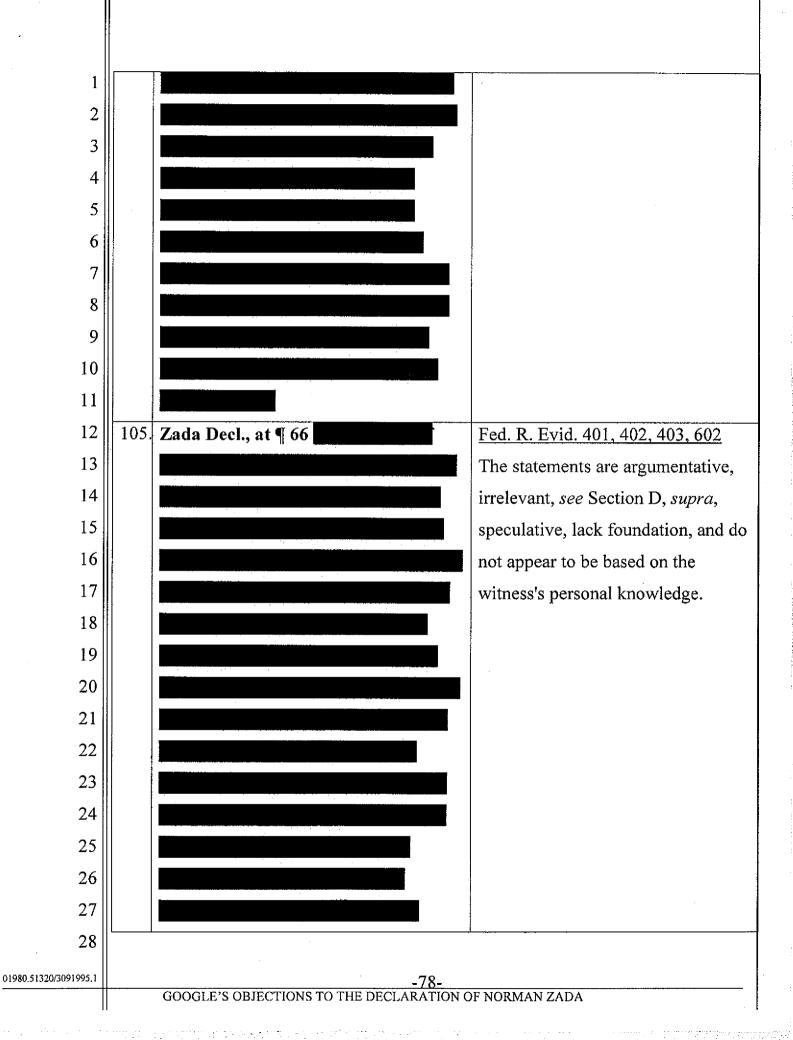
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14	101. Zada Decl., at ¶ 62	Fed. R. Evid. 401, 402, 403, 602
15		The statements are argumentative,
16		irrelevant (Yahoo's alleged DMCA
17		requirements are not relevant to
18		Google's qualification for safe
19		harbor), speculative, constitute
20		improper legal opinion,
21		mischaracterize the documents, and
22		lack foundation.
23		
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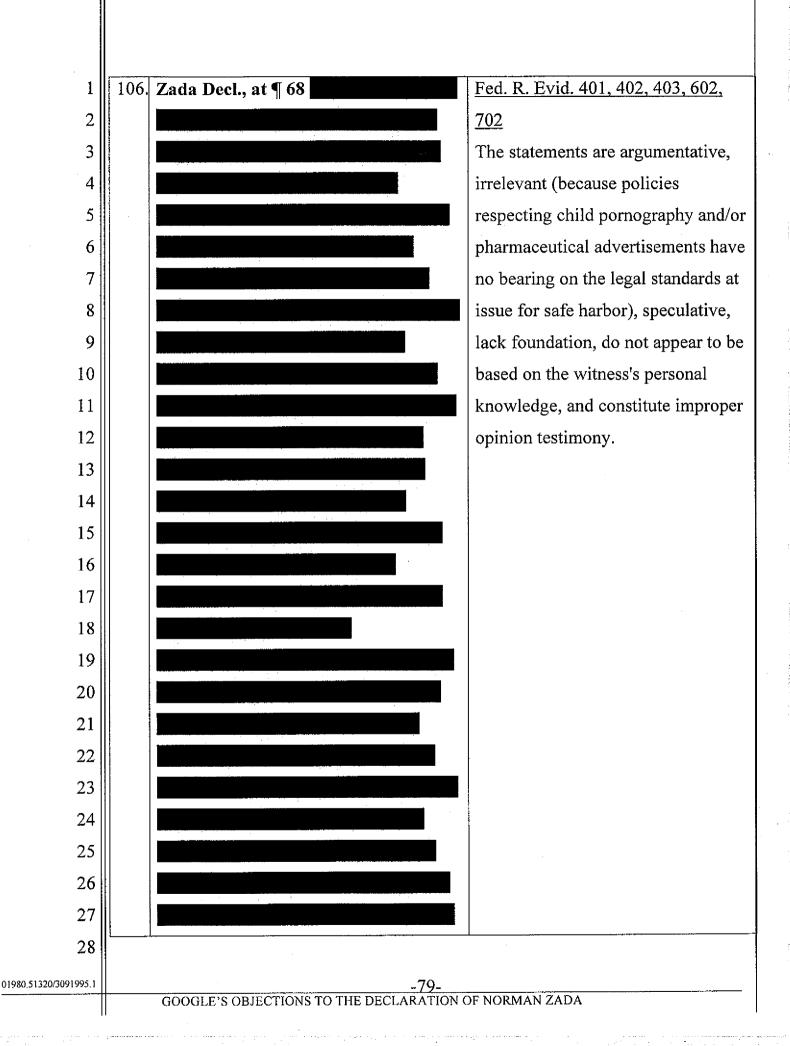






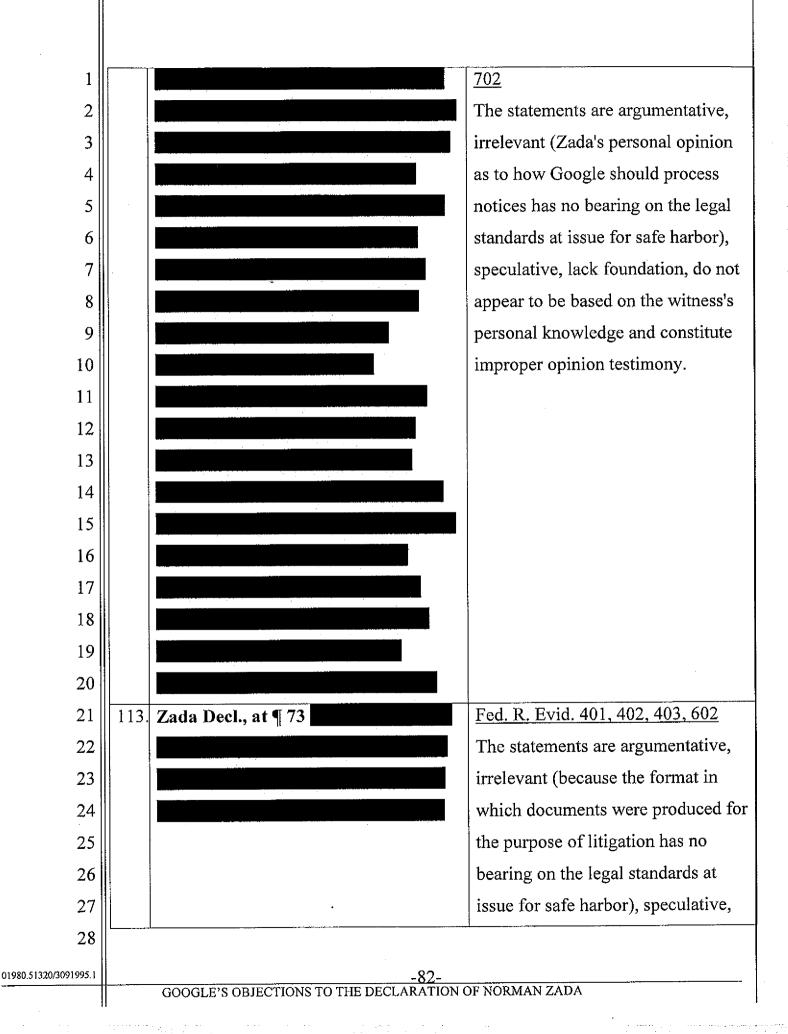






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4	107. <b>Zada Decl., at ¶ 69</b>	Fed. R. Evid. 401, 402, 403, 602,
5		702
6		The statements are argumentative,
7		irrelevant, speculative, lack
8		foundation, and constitute improper
9		opinion testimony.
10		
11	108. Zada Decl., at ¶ 70	Fed. R. Evid. 401, 402, 403, 602,
12		801-04
13		The statements are irrelevant,
14		speculative, lack foundation, is
15		inadmissible hearsay, and do not
16		appear to be based on the witness's
17		personal knowledge.
18		,
19		
20		
21	109. Zada Decl., at ¶ 70	Fed. R. Evid. 401, 402, 403, 602,
22		701
23		The statements are argumentative,
24		irrelevant (because Zada's personal
25		opinions have no bearing on the
26		legal standards at issue for safe
27		harbor), speculative,
28		
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	GOOGLE'S OBJECTIONS TO THE DECLARATION C	DF NORMAN ZADA

1		mischaracterize the documents
2		referenced, lack foundation,
3		constitute improper legal opinion,
4		and constitute improper opinion
5		testimony.
6		
7	110. Zada Decl., at ¶ 70	Fed. R. Evid. 401, 402, 403, 602
8		The statements regarding "The
9		Sample" are irrelevant. See Section
10		C, supra. The statements regarding
11		the cherry-picked excerpts of P10's
12		DMCA Notices also are irrelevant,
13		lacking in foundation, and violative
14		of the best evidence rule. See
15		Section B, supra
16		
17	111. Zada Decl., at ¶ 71	Fed. R. Evid. 401, 402, 403, 602
18		The statements are argumentative,
19		irrelevant (because P10 has not
20		alleged infringement via most of
21		these products and did not provide
22		Google with DMCA-compliant
23		notice of infringement as to all of
24		them), speculative, constitute
25		improper legal opinion, and lack
26		foundation.
27	112. Zada Decl., at ¶ 71	Fed. R. Evid. 401, 402, 403, 602,
28		
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ļ	GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA



1		and lack foundation.
2	114. Zada Decl., at ¶ 73	Fed. R. Evid. 401, 402, 403, 602,
3		<u>701</u>
4		The statements are argumentative,
5		irrelevant (because Zada's personal
6		analysis and opinions of Google's
7		document production have no
8		bearing on the legal standards at
9		issue for safe harbor),
10		mischaracterize the documents,
11		speculative, lack foundation, and
12		constitute improper opinion
13		testimony.
14		
15		
16	115. Zada Decl., at ¶ 73	Fed. R. Evid. 401, 402, 403, 602,
16 17	115. Zada Decl., at ¶ 73	Fed. R. Evid. 401, 402, 403, 602, 701, 1002
	115. Zada Decl., at ¶ 73	
17	115. Zada Decl., at ¶ 73	<u>701, 1002</u>
17 18	115. Zada Decl., at ¶ 73	701, 1002  The statements are argumentative,
17 18 19	115. Zada Decl., at ¶ 73	701, 1002 The statements are argumentative, irrelevant (Zada's personal
17 18 19 20	115. Zada Decl., at ¶ 73	701, 1002 The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no
17 18 19 20 21	115. Zada Decl., at ¶ 73	701, 1002 The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at
17 18 19 20 21 22	115. Zada Decl., at ¶ 73	701, 1002 The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at issue for safe harbor), speculative,
17 18 19 20 21 22 23	115. Zada Decl., at ¶ 73	701, 1002 The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at issue for safe harbor), speculative, mischaracterize the documents, lack
17 18 19 20 21 22 23 24	115. Zada Decl., at ¶ 73	The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at issue for safe harbor), speculative, mischaracterize the documents, lack foundation, and constitute improper
17 18 19 20 21 22 23 24 25	115. Zada Decl., at ¶ 73	The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at issue for safe harbor), speculative, mischaracterize the documents, lack foundation, and constitute improper opinion testimony. This statement
17 18 19 20 21 22 23 24 25 26	115. Zada Decl., at ¶ 73	The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at issue for safe harbor), speculative, mischaracterize the documents, lack foundation, and constitute improper opinion testimony. This statement also violates the best evidence rule
17 18 19 20 21 22 23 24 25 26 27	Jada Decl., at ¶ 73  GOOGLE'S OBJECTIONS TO THE DECLARATION	The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at issue for safe harbor), speculative, mischaracterize the documents, lack foundation, and constitute improper opinion testimony. This statement also violates the best evidence rule because Exhibit 55 is the best

		evidence of the contents of that
		document.
116	Zada Decl., at ¶ 73	Fed. R. Evid. 401, 402, 403, 602,
		701
		The statements are irrelevant
		(because Zada's personal opinion
		and analysis of documents produce
		by Google has no bearing on the
		legal standards at issue for safe
		harbor), mischaracterize the
		documents, speculative, lack
		foundation, and constitute imprope
		opinion testimony.
117	Zada Decl ¶ 74	Fed. R. Evid. 401, 402, 403, 602
		The statements are argumentative,
		irrelevant, speculative, and lack
		foundation.
118	3. Zada Decl., at ¶ 75	Fed. R. Evid. 401, 402, 403, 602,
		<u>701</u>
		The statements are argumentative,
		irrelevant (because Zada's persona
		opinions regarding Google's
		statements have no bearing on the
		legal standards at issue for safe
		harbor), speculative, lack
		foundation, and constitute imprope
		opinion testimony.
	_	84-

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1	119. Zada Decl., at ¶ 75	Fed. R. Evid. 401, 402, 403, 602
2		The statements are argumentative,
3		irrelevant, speculative, and lack
4		foundation.
5		
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8		·
9	120. <b>Z</b> ada Decl., at ¶ 75	Fed. R. Evid. 401, 402, 403, 602,
10		<u>701</u>
11		The statements are argumentative,
12		irrelevant (Zada's personal opinion
13		and analysis of testimony has no
14		bearing on the legal standards at
15		issue for safe harbor),
16		mischaracterize the document, are
17		speculative, lack foundation, and are
18		improper opinion testimony.
19	121. Zada Decl., at ¶ 75	Fed. R. Evid. 401, 402, 403, 602
20		The statements are argumentative,
21		irrelevant, speculative, and lack
22.		foundation.
23		
24		
25		
26	122. Zada Decl. Exh. 1, page 11	Fed. R. Evid. 401, 402, 403
27		The evidence is irrelevant, because
28		
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	GOOGLE'S OBJECTIONS TO THE DECLARATION	OF NORMAN ZADA

1			other companies' DMCA processes
2			have no bearing on Google's
3			qualification for DMCA safe harbor.
4	123.	Zada Decl. Exh. 2	Fed. R. Evid. 401, 402, 403
5			The evidence is irrelevant, because
6			"Whois" ownership of Blogger
7			websites has no bearing on
8			Google's qualification for safe
9			harbo, nor do the alleged features of
10			Adobe software depicted in the
11			screenshots n Exhibit 2.
12	124.	Zada Decl. Exh. 4	Fed. R. Evid. 401, 402, 403
3			The evidence is irrelevant to the
4			DMCA safe harbor issues before the
15			court.
16	125.	Zada Decl. Exhs. 5-6	Fed. R. Evid. 401, 402, 403, 602,
7			1002
18			The evidence regarding "The
۱9			Sample" is irrelevant. See Section
20			C, supra. The evidence regarding
21			the cherry-picked excerpts of P10's
22			DMCA Notices also are irrelevant,
:3			lacking in foundation, and violative
24			of the best evidence rule. See
:5			Section B, supra
26	126.	Zada Decl. Exh. 7	Fed. R. Evid. 401, 402, 403, 602
27			The evidence is irrelevant,

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1			speculative, and lacks foundation.
2			See Section D, supra.
3	127.	Zada Decl. Exh. 8	Fed. R. Evid. 401, 402, 403, 602
4			Evidence regarding the cherry-
5			picked excerpts of P10's DMCA
6			Notices also are irrelevant, lacking
7			in foundation, and violative of the
8			best evidence rule. See Section B,
9			supra.
10	128.	Zada Decl. Exh. 9	Fed. R. Evid. 401, 402, 403, 602,
11			<u>901, 1002</u>
12			Evidence regarding the cherry-
13			picked excerpts of P10's DMCA
14			Notices also are irrelevant, lacking
15			in foundation, and violative of the
16			best evidence rule. See Section B,
17			supra. This exhibit also
18			mischaracterizes the documents
19			referenced, lacks foundation,
20			constitutes improper opinion
21			testimony, and is not properly
22			authenticated.
23	129.	Zada Decl. Exh. 10	Fed. R. Evid. 401, 402, 403, 602
24			The evidence is unduly prejudicial
25			(P10 seeks to take the entirety of its
26			defective notices out of context by
27			pointing only to selected content),
28	L		
- 11			i de la companya de

1			irrelevant, and lacks foundation.
2	130.	Zada Decl. Exh. 12	Fed. R. Evid. 401, 402, 403, 602
3			The evidence is irrelevant,
4			speculative, and lacks foundation.
5	131.	Zada Decl. Exh. 13-17	Fed. R. Evid. 401, 402, 403, 602,
6			1002
7			The evidence is argumentative,
8			unduly prejudicial), and lacks
9			foundation. The evidence regarding
10			"The Sample" is irrelevant. See
11			Section C, supra. The evidence
12			regarding the cherry-picked excerpts
13			of P10's DMCA Notices also is
14			irrelevant, lacking in foundation,
15			and violative of the best evidence
16			rule. See Section B, supra
17	132.	Zada Decl. Exh. 18-19	Fed. R. Evid. 401, 402, 403, 602,
18			801-04
19			The evidence is argumentative,
20			irrelevant, speculative, lacks
21			foundation, and constitutes
22	3		inadmissible hearsay.
23	133.	Zada Decl. Exh. 20-21	Fed. R. Evid. 401, 402, 403, 602,
24			1002
25			The evidence is argumentative and,
26			unduly prejudicial. The statements
27			regarding the cherry-picked excerpts
28			
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		GOOGLE'S OBJECTIONS TO THE I	DECLARATION OF NORMAN ZADA

1			of P10's DMCA Notices also are
2			irrelevant, lacking in foundation,
3			and violative of the best evidence
4			rule. See Section B, supra
5	134.	Zada Decl. Exh. 22-24	Fed. R. Evid. 401, 402, 403, 602,
6			<u>1002</u>
7			The evidence is argumentative and
8			irrelevant. See Section D, supra.
9			The statements regarding "The
10			Sample" are irrelevant. See Section
11			C, supra. The statements regarding
12			the cherry-picked excerpts of P10's
13			DMCA Notices also are irrelevant,
14			lacking in foundation, and violative
15			of the best evidence rule. See
16			Section B, supra
17	135.	Zada Decl. Exhs. 25-45	Fed. R. Evid. 401, 402, 403, 602,
18			1002
19			The statements regarding "The
20			Sample" are irrelevant. See Section
21		·	C, supra. The statements regarding
22			the cherry-picked excerpts of P10's
23			DMCA Notices also are irrelevant,
24			lacking in foundation, and violative
25			of the best evidence rule. See
26		·	Section B, supra
27	136.	Zada Decl. Exhs. 46-47	Fed. R. Evid. 401, 402, 403, 602
28	L	<u>l</u>	
ı	II.		

The evidence is irrele foundation.  137. Zada Decl. Exh. 48  Fed. R. Evid. 401, 40 801-04 The evidence is argur irrelevant, lacks founconstitutes inadmissil  138. Zada Decl. Exhs. 49-51  Fed. R. Evid. 401, 40 1002 The exhibits regardin picked excerpts of P1 Notices also are irrele in foundation, and videst evidence rule. S supra.  139. Zada Decl. Exh. 52  Fed. R. Evid. 401, 40	2, 403, 602, nentative, dation, and ole hearsay. 2, 403, 602, g the cherry- 0's DMCA evant, lacking
3   137. Zada Decl. Exh. 48   Fed. R. Evid. 401, 40   801-04   The evidence is argur irrelevant, lacks founconstitutes inadmissil  8   138. Zada Decl. Exhs. 49-51   Fed. R. Evid. 401, 40   1002   The exhibits regardin picked excerpts of P1   Notices also are irrele in foundation, and vides the property of the propert	nentative, dation, and ble hearsay.  2, 403, 602, g the cherry- 0's DMCA evant, lacking
The evidence is argur irrelevant, lacks found constitutes inadmissil  8	nentative, dation, and ble hearsay.  2, 403, 602, g the cherry- 0's DMCA evant, lacking
The evidence is argur irrelevant, lacks found constitutes inadmissil constitutes inadmissil picked excerpts of P1 Notices also are irrelevant, lacks found constitutes inadmissil picked excerpts of P1 Notices also are irrelevant, lacks found constitutes inadmissil picked. R. Evid. 401, 40 1002  The exhibits regarding picked excerpts of P1 Notices also are irrelevant, lacks found constitutes inadmissil picked. R. Evid. 401, 40 1002  The exhibits regarding picked excerpts of P1 Notices also are irrelevant, lacks found constitutes inadmissil picked. R. Evid. 401, 40 1002  The evidence is argur irrelevant, lacks found constitutes inadmissil picked. R. Evid. 401, 40 1002  The exhibits regarding picked excerpts of P1 Notices also are irrelevant irrelevant, lacks found constitutes inadmissil picked. R. Evid. 401, 40 1002  The exhibits regarding picked excerpts of P1 Notices also are irrelevant irr	dation, and ole hearsay.  2, 403, 602,  g the cherry- 0's DMCA evant, lacking
irrelevant, lacks found constitutes inadmissil  Red. R. Evid. 401, 40  1002  The exhibits regardin picked excerpts of P1  Notices also are irreled in foundation, and vides to supra.	dation, and ole hearsay.  2, 403, 602,  g the cherry- 0's DMCA evant, lacking
7   Constitutes inadmissible   138. Zada Decl. Exhs. 49-51   Fed. R. Evid. 401, 40   1002   The exhibits regardin   picked excerpts of P1   Notices also are irrelating from foundation, and vides   15   Supra.	ole hearsay.  2, 403, 602,  g the cherry- 0's DMCA evant, lacking
8   138. Zada Decl. Exhs. 49-51   Fed. R. Evid. 401, 40   1002   10   The exhibits regardin   picked excerpts of P1   12   Notices also are irrele   in foundation, and vides   14   best evidence rule. Stappa.	g the cherry- 0's DMCA evant, lacking
10 10 10 10 10 10 10 10 10 10 10 10 10 1	g the cherry- 0's DMCA evant, lacking
The exhibits regarding picked excerpts of P1 Notices also are irreless in foundation, and visibest evidence rule. Since supra.	0's DMCA evant, lacking
picked excerpts of P1 Notices also are irrele in foundation, and vie best evidence rule. S supra.	0's DMCA evant, lacking
Notices also are irrele in foundation, and vie best evidence rule. S supra.	evant, lacking
in foundation, and videous evidence rule. Some supra.	
best evidence rule. S supra.	1
15 supra.	olative of the
	ee Section B,
16 139 Zada Decl. Exh. 52 Fed. R. Evid. 401, 40	
137, Zada Dock, Dan, 32	2, 403, <u>602</u>
The evidence is irrele	vant, and lacks
18 foundation.	
19 140. Zada Decl. Exhs. 53-57 Fed. R. Evid. 401, 40	2, 403, 602,
20 1002	
The statements regard	ling "The
22 Sample" are irrelevan	it. See Section
C, supra. The statem	ents regarding
24 the cherry-picked exc	erpts of P10's
25 DMCA Notices also	are irrelevant,
lacking in foundation	, and violative
of the best evidence in	ule. <i>See</i>
28	

1	Section B, supra
2	
3	DATED: September 8, 2009 QUINN EMANUEL URQUHART OLIVER & HEDGES. LLP
4	
5	By <u>Rachel Henrick Kassabian</u> Rachel Herrick Kassabian Attornevs for Defendant Google Inc.
6	Attorneys for Defendant Google Inc.
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