

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

Michael T. Zeller (Bar No. 196417)

2 michaelzeller@quinnemanuel.com

865 South Figueroa Street, 10th Floor

3 Los Angeles, California 90017-2543

Telephone: (213) 443-3000

4 Facsimile: (213) 443-3100

Charles K. Verhoeven (Bar No. 170151)

5 charlesverhoeven@quinnemanuel.com

50 California Street, 22nd Floor

6 San Francisco, California 94111

Rachel Herrick Kassabian (Bar No. 191060)

7 rachelkassabian@quinnemanuel.com

555 Twin Dolphin Drive, Suite 560

8 Redwood Shores, California 94065

9 Attorneys for Defendant GOOGLE INC.

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California  
corporation,

14 Plaintiff,

15 vs.

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

18 Defendants.

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

**GOOGLE INC.'S RESPONSE TO  
PERFECT 10, INC.'S OBJECTIONS  
TO EVIDENCE RE: SECOND  
SUPPLEMENTAL DECLARATION  
OF RACHEL HERRICK  
KASSABIAN IN SUPPORT OF  
GOOGLE'S MOTION TO COMPEL  
PERFECT 10 TO AFFIX  
DOCUMENT CONTROL  
NUMBERS TO ITS DOCUMENT  
PRODUCTION**

19 AND COUNTERCLAIM

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

22 Plaintiff,

23 vs.

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

26 Defendants.

Hon. Stephen J. Hillman

Date: None [Currently under  
submission]

Time: None

Crtrm.: 550

Discovery Cutoff: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

1 Plaintiff Perfect 10, Inc. (“Perfect 10”) has filed purported “Objections to  
2 Evidence” to the Second Supplemental Declaration of Rachel Herrick Kassabian in  
3 Support of Google’s Motion to Compel Perfect 10 to Affix Document Control  
4 Numbers to its Document Production (the “Declaration”). These “objections” are  
5 wholly without merit and should be overruled in their entirety.

6 **1. Perfect 10's Objections To Paragraph 2 and Exhibit 1 Lack Merit.**

7 At the September 22, 2009 hearing on multiple discovery matters, the Court  
8 requested that Google attempt to use the Adobe Acrobat program to affix Bates  
9 numbers to a sample portion of Perfect 10’s document production, and submit that  
10 sample for Perfect 10’s and the Court’s inspection. Google did exactly that, lodging  
11 a copy of the disk with the Court as Exhibit 1 to the Declaration (authenticated by  
12 Paragraph 2 of the Declaration), and serving a copy on Perfect 10 and the Amazon  
13 Defendants.

14 Perfect 10 now makes a series of objections to Paragraph 2 and Exhibit 1 of  
15 the Declaration, including objections based on Federal Rules of Evidence 602  
16 (personal knowledge), 901 (authentication), 801-04 (hearsay), and 701-02 (opinion  
17 testimony).<sup>1</sup> None of these objections has merit.

18 **Rule 602.** Perfect 10’s Rule 602 (personal knowledge) objection fails  
19 because the declarant, Ms. Kassabian, explicitly declared to her “personal and  
20 firsthand knowledge” (Declaration ¶ 1) that the Exhibit is a true and correct copy of  
21 a disk containing a particular production by Perfect 10, on which Adobe Acrobat  
22 Professional had been used to affix Bates-numbers.

23 **Rule 901.** Perfect 10’s Rule 901 (authentication) objection fails because the  
24 authentication requirement is “satisfied by evidence sufficient to support a finding  
25

---

26 <sup>1</sup> Remarkably, Perfect 10 made these objections before it had even examined  
27 Exhibit 1.

1 that the matter in question is what its proponent claims.” Ms. Kassabian declared to  
2 her personal knowledge that the Exhibit is a true and correct copy of a Perfect 10  
3 document production that was Bates-stamped with Adobe Acrobat Professional (i.e.,  
4 precisely what the proponent claims it is).

5 **Rules 801-04.** Perfect 10’s general “hearsay” objection borders on the  
6 absurd. The witness simply declared that the Exhibit is the disk the Court requested,  
7 so there is no out-of-court statement offered on the merits here. Moreover, even if  
8 any portion of paragraph 2 was hearsay, Perfect 10 cites no authority for the  
9 proposition that this Court cannot consider such statements of counsel in ruling on a  
10 motion to compel.

11 **Rules 701 and 702.** Lastly, Perfect 10’s argument that creating this disk  
12 “may” somehow require expert testimony is meritless as well. Disk media are one  
13 of the most basic pieces of office equipment in use today and are routinely filed by  
14 litigants. There is no need for expert testimony to substantiate the simple process of  
15 saving files to a disk (nor has Perfect 10 ever supported its repeated filings of disk  
16 and hard drive media with “expert” testimony).

17 **2. Perfect 10’s Objections to Exhibit 2 Lack Merit.**

18 Perfect 10’s objections to Exhibit 2 of the Declaration fail as well. Exhibit 2  
19 is a transcript of a portion of a television program featuring Norman Zada and his  
20 company Perfect 10, which was broadcast on a national television network and is  
21 available for viewing on tvland.com. Perfect 10 makes a bevy of unexplained  
22 objections to that transcript, including that the statements are “irrelevant,”  
23 “hearsay,” “not statements of Dr. Zada,” “not even close to true,” “lack foundation  
24 and personal knowledge,” “prejudicial,” “confusing,” and “a waste of time.” These  
25 objections are improper and facially incorrect. The transcript and video clip of the  
26 show (on which Perfect 10 officer Norman Zada voluntarily appeared, and was  
27 profiled as an extremely wealthy person) feature statements made by and about Zada

1 to a national audience. Those statements concern Zada's and Perfect 10's finances  
2 and assets, subjects that are relevant to Perfect 10's "poverty" defense to the Bates  
3 stamping motion. There is no tenable hearsay objection because the statements are  
4 party admissions, and therefore not hearsay at all. Fed. R. Evid. 801(d). There is no  
5 issue with "foundation" or "personal knowledge" because the television program  
6 and the transcript thereof speak for themselves.<sup>2</sup>

7 For the foregoing reasons, Google respectfully requests that the Court  
8 overrule Perfect 10's Objections to Evidence.

9  
10 DATED: October 5, 2009

QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP

11  
12 By *Rachel Herrick Kassabian*  
13 Rachel Herrick Kassabian  
14 Attorneys for Defendant GOOGLE INC.

15  
16  
17  
18  
19  
20  
21 <sup>2</sup> Along with its Objections to Evidence, Perfect 10 also filed a "Declaration Of  
22 Norman Zada In Reply To Google's Supplemental Memorandum In Support Of Its  
23 Motion To Compel Perfect 10, Inc. To Affix Control Numbers To Its Document  
24 Production." In that Declaration, Zada appears to confess that the statements and  
25 representations Zada made on the "How'd You Get So Rich" television program  
26 regarding his vast wealth were untrue. See Zada Declaration ¶ 2 (Docket No. 549).  
27 Setting aside the dubious reliability of a declaration submitted for the purpose of  
28 confirming the falsity of prior statements made by that declarant, nowhere in the  
Zada Declaration does Zada offer any evidence correcting the financial information  
Zada disclosed on the program.