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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 COUNTERCLAIM

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

21 Plaintiff,

22 v.

23 AMAZON.COM, INC., a
24 corporation, et al.,

25 Defendant.

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

DISCOVERY MATTER

**PERFECT 10'S RESPONSE TO
GOOGLE INC.'S REQUEST FOR
CLARIFICATION RE: THE
ORDER COMPELLING PERFECT
10 TO PRODUCE COMPLETE AND
UNREDACTED FINANCIAL
DOCUMENTS AND OTHER
DAMAGES-RELATED
DOCUMENTS, AND
AMAZON.COM AND ALEXA
INTERNET'S JOINDER THEREIN**

Before Judge Stephen J. Hillman

Date: None Set
Time: None Set
Place: Courtroom 550

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

1 **I. INTRODUCTION.**

2 Google’s request for clarification of this Court’s October 6, 2009 Order
3 regarding financial documents is an improper, belated request for
4 reconsideration.

5 As a threshold matter, Google mischaracterizes Perfect 10’s position on
6 the requested clarification. (Google did not include in its exhibits the
7 correspondence between counsel on this matter, but Perfect 10 does. *See*
8 Exhibits 1 and 2 to the Mausner declaration.) Perfect 10 never said it construed
9 the Court’s Order as a Protective Order. Perfect 10 stated that it disagreed with
10 Google’s position and that given the Court Order and rulings, the production of
11 the Microsoft settlement agreement is not required. Moreover, there is no need
12 for clarification – the language is clear but Google has only quoted a snippet in
13 its request instead of all of the applicable language. Moreover, Google is
14 requesting that this Court find that defendants are somehow entitled to yet more
15 information regarding confidential settlement agreements in other actions based
16 on its incorrect interpretation of the Order. Google and Amazon already have
17 received all of the information the Court ordered Perfect 10 to produce at the
18 September 22, 2009 hearing regarding the Microsoft settlement, and Google has
19 made absolutely no showing as to why any additional information is necessary.
20 Finally, this Court’s Order in *Perfect 10 v. Net Management Services, et al.*,
21 attached as Exhibit 3 to the Mausner declaration, underscores that there is no
22 reason to disclose any additional settlement information.

23 **II. GOOGLE’S REQUEST SHOULD BE DENIED.**

24 **A. Google Mischaracterizes Perfect 10’s Position.**

25 In response to Google’s October 15 letter request that Perfect 10 agree to
26 Google’s incorrect interpretation of the Court’s Order, Perfect 10’s counsel
27 wrote the following to Google’s counsel:

28 Perfect 10 does not agree with Google’s interpretation. As you know,

1 Perfect 10 has taken the position that in light of the Court’s rulings
2 regarding financial documents, the production of the Microsoft
3 settlement agreement is not required.

4 (Attached as Exhibit 1 to the Mausner declaration is a copy of the letter to
5 Jeffrey Mausner from Rachel Kassabian, dated October 15, 2009; attached as
6 Exhibit 2 is the email to Ms. Kassabian from Mr. Mausner in response, dated
7 October 18, 2009.)

8 **B. The Court’s Order Clearly States That Perfect 10 Is Not**
9 **Required To Disclose Any Additional Settlement Information.**

10 The following is the applicable language regarding settlement
11 information in the Court’s Order, Paragraph 2:

12 Settlement payments Perfect 10 has received from third parties are
13 relevant for discovery purposes. This Court is not ruling on whether this
14 information is relevant for any other purpose. Perfect 10 may not redact
15 information regarding the date, payor, and amount of any such settlement
16 payments. This information will be treated as “HIGHLY
17 CONFIDENTIAL” under the terms of the Protective Order. Perfect 10’s
18 compliance with the Order is stayed for ten (10) days from the hearing
19 date, September 22, 2009. By producing such settlement payment
20 information pursuant to this Order, neither Perfect 10 nor its counsel will
21 be in violation of any protective orders or confidentiality provisions
22 entered into in this action or in any other action, or with any of the
23 settling third-parties. *Perfect 10 is not required to produce any*
24 *information about any settlements with third-parties, other than the*
25 *date, payor, and amount of any such settlement payments. and may*
26 *redact the settlement information it is not required to produce.*

27 (Google asked this Court not to include the language emphasized, but it was
28 included by the Court in its Order.)

1 The language of the Order clarifies that Perfect 10 is not required to
2 produce any additional settlement information. Thus, Google is effectively
3 belatedly moving for reconsideration.

4 Google's request for modification is nothing other than an attempt to
5 eviscerate the language of the Court's Order so that it can then seek to obtain
6 additional settlement information, when the plain language of the Court Order
7 clearly states that "*Perfect 10 is not required to produce any information*
8 *about any settlements with third-parties, other than the date, payor, and*
9 *amount of any such settlement payments....*" (Order, Para. 2.)

10 **C. In the *Perfect 10 v. Net Management* Case, This Court Did Not**
11 **Require The Disclosure Of Any Third-Party Settlement**
12 **Information, Let Alone The Disclosure Of The Agreements**
13 **Themselves, Upholding The Strong Public Policy Against**
14 **Disclosure Of Confidential Settlement Documents.**

15 The Court's Order in *Perfect 10 v. Net Management Services, et al.*,
16 CV02-3735-LGB (SHx), underscores that the Court's Order here should not be
17 modified. (See Order dated July 21, 2003, a copy of which is attached as
18 Exhibit 3 to the Mausner Declaration.) In that litigation, Perfect 10 was not
19 required to provide *any* third-party settlement information, let alone the
20 agreements themselves. In the *Perfect 10 v. Net Management* Order, this Court
21 held:

22 *The court concludes that the settlement agreements and related*
23 *settlement documents should not be produced. Not only should the*
24 *strong public policy cautioning disclosure of confidential settlement*
25 *documents be honored in this case, but the court concludes that the*
26 *settlement documents have no relevance to Perfect 10's claims against*
27 *the defendants in this case....*

28 (Exhibit 3, p. 2, emphasis added.)

1 **D. Other Courts Have Not Required The Disclosure Of Third-**
2 **Party Settlement Information, Based On the Strong Public**
3 **Policy Against Disclosure of Confidential Settlements.**

4 Other courts have come to the same conclusion. For example, in *Butta-*
5 *Brinkman v. FCA Intern., Ltd.*, 164 F.R.D. 475 , 476-77 (N.D. Ill. 1995), the
6 court held:

7 Finally, the defendant contends that it should not be required
8 to turn over confidential settlement agreements reached in other
9 cases involving sexual harassment. FCA argues that the strong
10 congressional policy favoring settlement weighs in favor of
11 keeping such documents protected, so long as the information is
12 available through other means. *See Cook v. Yellow Freight Sys.,*
13 *Inc.*, 132 F.R.D. 548, 554-55 (E.D.Cal.1990) (denying motion to
14 compel production of documents containing information about
15 confidential settlement discussions); *Bottaro v. Hatton Assocs.*, 96
16 F.R.D. 158, 160 (E.D.N.Y.1982) (denying motion to compel
17 production of settlement agreement); *see also Grove Fresh*
18 *Distribs., Inc. v. John Labatt, Ltd.*, 888 F.Supp. 1427, 1441
19 (N.D.Ill.1995) (“And while there is simply no legitimate public
20 interest to be served by disclosing settlement agreements, the
21 parties to the agreement are likely to have a compelling interest in
22 keeping the settlement amount confidential.”) (quotations omitted).
23 We find this reasoning compelling. Absent a showing by the
24 plaintiff that she will be unable to obtain the relevant information
25 through other discovery requests or interrogatories, we believe
26 these settlement documents ought to retain their confidentiality.
27 Accordingly, we sustain this portion of FCA's objection, and deny
28 the plaintiff's motion to compel the production of confidential

1 settlement agreements reached with other employees.
2 Google and Amazon.com have already received the information regarding the
3 amount of the Microsoft settlement through other means, from the financial
4 statements, which were produced on October 16 pursuant to the Court's Order.

5 *See also Davenport v. Indiana Masonic Home Foundation, Inc*, 2003 WL
6 1888986 at *3 (S.D. Ind. 2003) ("Settlement serves an important role in
7 expediting and improving the efficiency of the litigation process. See *Grove*
8 *Fresh Distribs., Inc. v. John Labatt Ltd.*, 888 F.Supp. 1427, 1441
9 (N.D.Ill.1995). Thus, courts are generally reluctant to order disclosure of
10 negotiations or documents related to a settlement agreement."); *Folb v. Motion*
11 *Picture Industry Pension & Health Plans*, 16 F.Supp.2d 1164, 1174-75 (C.D.
12 Ca. 1998).

13 **III. CONCLUSION.**

14 Contrary to the expectations of Perfect 10 and the parties that settled with
15 Perfect 10, the amounts of the settlements have already been disclosed to
16 Google and Amazon.com. There is no plausible reason that the confidential
17 settlement agreements, or any other information regarding those confidential
18 settlements, has to be disclosed. It will certainly discourage settlements that
19 parties want to keep confidential, if courts order that such settlement
20 agreements be produced in subsequent litigation. That is the reason for the
21 strong public policy against disclosure of confidential settlement documents.
22 The Court should deny Google's request in its entirety.

23 Dated: October 23, 2009

Respectfully submitted,
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Jeffrey N. Mausner

26 By: _____

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