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8 Redwood Shores, California 94065
9 Attorneys for Defendant GOOGLE INC.

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

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

16 vs.

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

20 AND COUNTERCLAIM

21 PERFECT 10, INC., a California
corporation,
22
23 Plaintiff,

24 vs.

25 AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation; and
DOES 1 through 100, inclusive,
26
27 Defendants.

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

**DECLARATION OF THOMAS
NOLAN IN SUPPORT OF GOOGLE
INC.'S JOINDER IN DEFENDANTS
AMAZON.COM, INC. AND ALEXA
INTERNET'S EX PARTE
APPLICATION FOR AN ORDER
COMPELLING PERFECT 10, INC.
TO AFFIX PRODUCTION
NUMBERS TO ITS PRODUCTION
AND TO REIMBURSE
DEFENDANTS FOR COSTS AND
REQUEST FOR A TELEPHONIC
CONFERENCE, AND
RESPONSE TO PERFECT 10'S
OPPOSITION THERETO**

Hon. Stephen J. Hillman

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

Discovery Cut-off: None Set
Pre-trial Conference: None Set
Trial Date: None Set

1 I, Thomas Nolan, declare as follows:

2 1. I am a member of the bar of the State of California and an associate
3 with Quinn Emanuel Urquhart Oliver & Hedges, LLP, counsel for Defendant
4 Google Inc. in this action. I make this declaration of my personal and firsthand
5 knowledge and, if called and sworn as a witness, I could and would competently
6 testify thereto.

7 2. I submit this declaration in support of Defendant Google Inc.'s Joinder
8 in Defendants Amazon.com, Inc. and Alexa Internet's *Ex Parte* Application for an
9 Order Compelling Perfect 10, Inc. to Affix Production Numbers to its Production
10 and to Reimburse Defendants for Costs and Request for a Telephonic Conference,
11 and Response to Perfect 10's Opposition Thereto (filed concurrently herewith).

12 3. I informed Perfect 10 of Google's intention to file this Joinder and
13 Response on a *ex parte* basis via email at 2:24 p.m. on October 30, 2009.

14 4. I have reviewed the Declaration of Jeffrey N. Mausner filed October
15 30, 2009, and the October 22, 2009 letter Mr. Mausner attached thereto as Exhibit 2.
16 In that letter, which Perfect 10 emailed to Google's counsel (including myself) on
17 October 22, Perfect 10 made certain accusations regarding Google's alleged
18 discovery conduct. Google currently is in the process of meeting and conferring
19 with Perfect 10 to seek the factual basis for Perfect 10's accusations, so that Google
20 may investigate and respond to them.

21 5. I am personally copied on the majority of all correspondence between
22 counsel for Google and Perfect 10 regarding discovery disputes in this matter, and
23 am generally informed as to the substance of any such disputes in which I am not
24 personally involved. I have searched the prior meet and confer correspondence
25 between the parties, and to the best of my knowledge, Perfect 10 has never
26 requested to meet-and-confer with Google under Local Rule 37-1 regarding
27 Google's Responses and Objections to Perfect 10's Request for Production Nos.
28 342-347.

1 6. Following standard litigation practices, it has been Google's practice in
2 this matter to make its electronic document productions in text-searchable format,
3 typically in .TIFF and/or .jpg format (and sometimes in .pdf format). I am not
4 aware of any instance in which, after receiving a Google electronic document
5 production, Perfect 10 notified Google that there was some technical error in the
6 production such that files produced in fact were not text-searchable. Although in its
7 opposition brief Perfect 10 does not identify precisely which document(s) it refers to
8 as Google's allegedly non-searchable "DMCA log," the various typewritten
9 spreadsheets Google produced electronically which documented Google's response
10 to various DMCA notices were indeed produced in text-searchable format.

11 7. On October 22, 2009 Perfect 10 produced a hard drive to Google. By
12 email, Perfect 10 informed me that this hard drive contained documents responsive
13 to the Court's Order dated October 6, 2009 compelling production of financial and
14 other damages-related documents. I have personally reviewed the hard drive. The
15 hard drive contains a large number of documents spread throughout multiple folders
16 and subfolders. It includes screenshots of search results from several search
17 engines, apparent purported DMCA-related materials, contracts with various third-
18 parties, and emails, among other things. In my review I came across numerous
19 documents that were not text-searchable. I located no folders of documents labeled
20 "financial documents," "damages documents," or with any sort of clear reference to
21 the Court's Order dated October 6, 2009.

22 8. On October 21, 2009, I took the deposition of Perfect 10 employee
23 Sheena Chou. During that deposition I handed Ms. Chou an exhibit containing
24 documents produced by Perfect 10. Because Perfect 10 did not affix Bates-numbers
25 to those documents when it produced them to Google, those documents did not bear
26 Bates-numbers.

27 9. Attached hereto as Exhibit A is a true and correct copy of an email
28 dated October 25, 2009 from Jeffrey N. Mausner to myself.

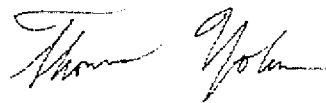
1 10. Attached hereto as Exhibit B is a true and correct copy of a letter dated
2 June 3, 2009 from my colleague Andrea Pallios Roberts to Mr. Mausner.

3 11. Attached hereto as Exhibit C is a true and correct copy of excerpts of
4 the transcript of the September 22, 2009 hearing before the Hon. Stephen J.
5 Hillman.

6 12. Attached hereto as Exhibit D is a true and correct copy of excerpts of a
7 "Joint Letter" faxed to the Court by counsel for Perfect 10 on November 14, 2008
8 (Docket No. 380).

9 13. Attached hereto as Exhibit E is a true and correct copy of excerpts of
10 Perfect 10's Response to Defendants Amazon.com and Alexa Internet's Ex Parte
11 Application to Continue Summary Judgment Filing Deadline, filed on September
12 11, 2009 in the consolidated case against the *Amazon* defendants.

13 I declare under penalty of perjury under the laws of the United States of
14 America that the foregoing is true and correct. Executed November 2, 2009 at Los
15 Angeles, California.

16
17 

18
19 _____
Thomas Nolan

EXHIBIT A

Thomas Nolan

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Sunday, October 25, 2009 10:52 AM
To: Thomas Nolan
Cc: Michael T Zeller; Rachel Herrick Kassabian; 'Jansen, Mark T. '; trcahn@townsend.com; 'Valerie Kincaid'
Subject: RE: Sheena Chou documents

Tom: Google misrepresented to the Court that it would be quick and cheap to Bates number Perfect 10's massive electronic productions. Google has never attempted to substantiate that misrepresentation with anything other than testimony by Mike Zeller and Rachel Kassabian, and undisclosed others. As soon as the Court ordered Google to do the Bates numbering, and substantiate its claims with an agreed upon expert, Google quickly came up with another "solution" (the second proposal) that it wishes to unilaterally impose on Perfect 10. (For example, at the October 21 deposition of Sheena Chou, Google showed the witness documents from Perfect 10's production, but refused to abide by its own proposal and provide file path information.) Perfect 10 Bates numbered the last production because it consisted of 222 pages in one Adobe document, and was quick and cheap to do so. Since Google is now attempting to substantiate and "revive" its Bates numbering proposal by pointing to Perfect 10's Bates numbering of a few hundred pages of documents in a single file, Perfect 10 will not Bates number any other productions until these issues are either resolved by the parties or Judge Hillman. Jeff.

From: Thomas Nolan [mailto:thomasnolan@quinnemanuel.com]
Sent: Thursday, October 22, 2009 5:06 PM
To: Jeffrey Mausner
Cc: Michael T Zeller; Rachel Herrick Kassabian; 'Jansen, Mark T. '; trcahn@townsend.com; Valerie Kincaid
Subject: RE: Sheena Chou documents

Hi Jeff,

What program did you use to apply the Bates numbers and confidentiality designations to these documents?

Best Regards,

Thomas Nolan
Associate,
Quinn Emanuel Urquhart Oliver & Hedges LLP.

865 S. Figueroa St 10th Floor
Los Angeles, Ca 90017
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213.443.3000 Main Office Number
213.443.3100 FAX
thomasnolan@quinnemanuel.com
www.quinnemanuel.com

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EXHIBIT A
PAGE 5

From: Jeffrey Mausner [mailto:jeff@mausnerlaw.com]

Sent: Monday, October 19, 2009 11:58 AM

To: Rachel Herrick Kassabian; Thomas Nolan; Michael T Zeller; Brad R. Love; Andrea P Roberts; mtjansen@townsend.com; ajmalutta@townsend.com; Timothy Cahn; glcincone@townsend.com; Steiner, Elham F.

Cc: Valerie Kincaid

Subject: Sheena Chou documents

Attached is the document production in connection with the Sheena Chou deposition. These documents are designated Confidential. Jeff.

This e-mail may be confidential or may contain information which is protected by the attorney-client privilege and work product doctrine, as well as other privileges. If you are not the intended recipient of this e-mail, any dissemination or copying of this message is strictly prohibited. Anyone who mistakenly receives this e-mail should notify the sender immediately by telephone or return e-mail and delete it from his or her computer.

Jeffrey N. Mausner
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EXHIBIT A
PAGE 6

EXHIBIT B

quinn emanuel trial lawyers | silicon valley

555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL: (650) 801-5000 FAX: (650) 801-5100

June 3, 2009

U.S. MAIL

Jeffrey N. Mausner, Esq.
Warner Center Towers
21800 Oxnard Street, Suite 910
Woodland Hills, CA
Email: jeff@mausnerlaw.com

Re: Perfect 10, Inc. v. Google Inc.; Document Production

Dear Jeff:

Enclosed are documents bearing control numbers GGL053552-5610. Among other things, Google is supplementing its production with Perfect 10's alleged notices of infringement received since Google's last production, but Google is not re-producing the DVDs Perfect 10 provided with those alleged notices, because Perfect 10 already has copies of those materials.

Very truly yours,



Andrea Pallios Roberts
51320/2957603.1

51320/2957603.1

EXHIBIT

B

PAGE

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EXHIBIT C

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PERFECT 10, INC.,)
)
 PLAINTIFF,)
)
 VS.) CASE NO. CV 04-9484-AHM(SHX)
)
)
 GOOGLE, INC.,) LOS ANGELES, CALIFORNIA
) SEPTEMBER 22, 2009
) (10:02 A.M. TO 11:09 A.M.)
) (11:21 A.M. TO 12:52 A.M.)
 DEFENDANT.) (1:35 P.M. TO 2:43 P.M.)
) (2:52 P.M. TO 3:09 P.M.)

HEARING
BEFORE THE HONORABLE STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE NEXT PAGE
COURT REPORTER: RECORDED
COURTROOM DEPUTY: SANDRA L. BUTLER
TRANSCRIBER: DOROTHY BABYKIN
COURTHOUSE SERVICES
1218 VALEBROOK PLACE
GLENORA, CALIFORNIA 91740
(626) 963-0566

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

EXHIBIT C
PAGE 8

1 EMAIL STRING I THINK YOU WOULD SEE, YOUR HONOR, THAT WHENEVER
2 THEY WANT TO SHOW SOMETHING TO SOMEBODY, AND IT'S NOT -- IT'S
3 NOT HIGHLY -- YOU KNOW, THAT INVOLVED A CASE WHERE THEY
4 WANTED TO SHOW IT TO THEIR EXPERTS AND PEOPLE WHO WORKED IN
5 THE COMPANY AND SO ON. WE SAID, FINE, DO IT. THEY JUST
6 ASKED US. WITHIN AN HOUR I SAID, FINE, SHOW IT TO THEM.

7 IT'S GOING TO BE EXTREMELY BURDENSOME FOR US TO GO
8 THROUGH AND STAMP EACH DOCUMENT "CONFIDENTIAL" OR
9 "NON-CONFIDENTIAL." IT'S GOING TO BE JUST AS -- YOU KNOW,
10 MORE BURDENSOME THAN PUTTING A NUMBER ON IT. AND WE JUST
11 CAN'T DO IT. WE CANNOT DO EVERY --

12 THE COURT: ALL RIGHT. LET ME SEE THE PROTECTIVE
13 ORDER. I APPRECIATE YOUR BEING HONEST AS TO THE DIFFICULTY.

14 MS. KASSABIAN: I APOLOGIZE, YOUR HONOR. THERE'S A
15 LITTLE BIT OF HIGHLIGHTING ON THERE, BUT THERE'S NO WRITING
16 OR ANYTHING.

17 THE COURT: OKAY.

18 MS. KASSABIAN: OH, NEVER MIND. WE HAVE A CLEAN
19 COPY.

20 THE COURT: OKAY.

21 (PAUSE IN PROCEEDINGS.)

22 MR. MAUSNER: YOUR HONOR, I'D ALSO LIKE TO SHOW
23 YOUR HONOR WHAT GOOGLE HAS DESIGNATED AS CONFIDENTIAL --

24 THE COURT: OKAY.

25 MR. MAUSNER: -- MORE SO THAN EVEN PERFECT 10.

EXHIBIT _____

PAGE _____

C

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1 MS. KASSABIAN: AND, AGAIN, YOUR HONOR, THAT
2 OBVIOUSLY HAS NOTHING TO DO WITH WHY WE'RE HERE TODAY. AND
3 IF PERFECT 10 HAS A PROBLEM WITH GOOGLE'S DESIGNATIONS, THEY
4 CAN MEET AND CONFER WITH US AND FILE A MOTION, AND WE'LL DEAL
5 WITH THAT IN DUE COURSE.

6 MR. MAUSNER: WELL, WE CAN'T DO THAT. WE CAN'T --
7 WE CAN'T DO AS MANY MOTIONS AND AS MANY LETTERS AND EMAILS AS
8 GOOGLE DOES TO US OBVIOUSLY.

9 THE COURT: IS THE PROBLEM REALLY WITH THE
10 CONFIDENTIALITY DESIGNATION OR WITH LOCAL RULE 79-3 SEALING.
11 WHERE'S THE PROBLEM?

12 MS. KASSABIAN: CERTAINLY SEALING IS ONE OF THE
13 BIGGEST RESULTING PROBLEMS WITH PERFECT 10'S
14 OVER-DESIGNATION. AND WE CITED IN OUR BRIEFING, YOUR HONOR,
15 THE ULLICO CASE. I'M NOT SURE IF I'M PRONOUNCING THAT RIGHT.

16 THE COURT: YES. I KNOW.

17 MS. KASSABIAN: U-L-L-I-C-O.

18 WE HAVE A VERY SIMILAR SITUATION HERE. WHEN A
19 PARTY OVER-DESIGNATES, EVERY TIME WE WANT TO FILE A DOCUMENT
20 WITH THE COURT, EVERY TIME WE WANT TO SHOW A DOCUMENT AT A
21 DEPOSITION, EVERY TIME WE WANT TO REVIEW A DOCUMENT FOR
22 WORK-PRODUCT PURPOSES AND POSSIBLY SHOW IT TO OTHERS, WE
23 WOULD HAVE TO PICK UP THE PHONE AND CALL PERFECT 10 AND ASK
24 THEM IF IT'S OKAY.

25 THAT IS NOT HOW THE PROTECTIVE ORDER WORKS. NOR

EXHIBIT

C

PAGE

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C E R T I F I C A T E

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I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

DOROTHY BABYKIN

10/2/09

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN

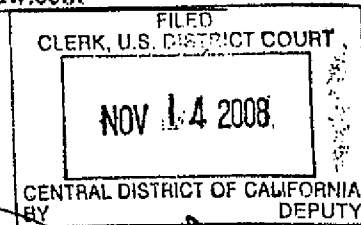
EXHIBIT C
PAGE 11

EXHIBIT D

**LAW OFFICES OF
JEFFREY N. MAUSNER**

Warner Center Towers
21800 Oxnard Street, Suite 910
Woodland Hills, California 91367
Telephone (818) 992-7500
Facsimile (818) 716-2773
E-mail: jeff@mausnerlaw.com

November 14, 2008



The Honorable Stephen J. Hillman
Chief United States Magistrate Judge

Re: Perfect 10 v. Google CV 04-9484 AHM (SHx); Perfect 10 v. Microsoft,
CV07-5156 AHM (SHx)

By Fax to (213) 894-4381

Dear Judge Hillman:

Per the instructions provided by your clerk, this is a Joint Letter regarding Perfect 10's request that this Court:

- (1) Order Google not to file any additional motions to compel until after December 8, 2008 (the hearing date for the motion for summary judgment in the Amazon/Alexa case), and that Google defer the meet and confer process regarding discovery issues until after December 8.
- (2) Order that Google limit its discovery after December 8, 2008 to those issues pertaining to the summary judgment motion Google has said it is filing shortly, and that any future discovery be done at a reasonable pace.

PERFECT 10'S POSITION

Perfect 10 and Amazon subsidiary A9.com just completed A9's motion for summary judgment. The hearing on Perfect 10's summary judgment motion against Amazon and its subsidiary Alexa is December 8, 2008. On November 7, Google advised Perfect 10 that it is going to be filing a motion for summary judgment in the near future. Since the October 6 status conference, the Defendants, particularly Google, have been subjecting Perfect 10 to a ceaseless barrage of e-mails and letters regarding discovery, most of it having nothing to do with issues that Judge Matz was concerned with at the October 6 hearing. It is obvious that Google is doing this to crush Perfect 10 and make it impossible for

claimed it needed to meet and confer about, and which is the subject of numerous threats to file yet another motion to compel.

Google and its counsel, Quinn Emanuel, are out of control and Perfect 10 asks this Court to reign in their attempts to crush a smaller litigant.

GOOGLE'S POSITION

1. Perfect 10's Informal Request for a Discovery Stay Is Procedurally Improper.

In its portions of this "Joint Letter," Perfect 10 asks the Magistrate Judge to stay Google's discovery so that Perfect 10 purportedly can devote itself to preparing a single reply brief in support of its own motion for summary judgment against Alexa and Amazon in the Amazon case.

Even apart from its lack of merit (as discussed below), Perfect 10's request is procedurally improper. The power to manage the case schedule rests with the District Judge. It is not one of the powers delegated to Magistrate Judges under Rule 72(a), and the reference to the Magistrate Judge in this case was for discovery matters *only*. See Docket No. 20. If Perfect 10 believes a stay of the case is warranted, Perfect 10 is required to satisfy the pre-filing requirements of Local Rule 7-3 and then file a noticed motion with Judge Matz to modify the case schedule. Having failed to satisfy the pre-filing requirements or to bring such a properly noticed motion (or even an application for *ex parte* relief), Perfect 10's request should be rejected. See Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent."); Zivkovic v. Southern Calif. Edison Co., 302 F.3d 1080, 1087-88 (9th Cir. 2002).

Because a stay request can only be made to the District Judge and because Perfect 10 has failed to properly meet and confer or otherwise meet the requirements for motion practice under Local Rule 7-3, its request should be rejected on those grounds alone.

2. Judge Matz Has Already Rejected Perfect 10's Stay Request

Even if Perfect 10 had followed the Rules, its request lacks merit because Judge Matz has *already declined* to stay discovery in this case. Contrary to Perfect 10's suggestions, Judge Matz made clear at the October 6, 2008 Status Conference that

Sincerely,

LAW OFFICES OF JEFFREY N. MAUSNER

Jeffrey N. Mausner

By: Jeffrey N. Mausner, attorneys for Perfect 10

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

Michael T. Zeller, with permission

By: Michael T. Zeller, attorneys for Google

EXHIBIT E

1 Jeffrey N. Mausner (State Bar No. 122385)
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4 21800 Oxnard Street, Suite 910
5 Woodland Hills, California 91367-3640
6 E-Mail: Jeff@MausnerLaw.com
7 Telephone: (310) 617-8100, (818) 992-7500
8 Facsimile: (818) 716-2773

9 Attorneys for Plaintiff Perfect 10, Inc.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 PERFECT 10, INC., a California
13 corporation,
14 Plaintiff,
15 v.
16 AMAZON.COM, INC., et al.
17 Defendants.

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

**PERFECT 10'S RESPONSE TO
DEFENDANTS AMAZON.COM AND
ALEXA INTERNET'S EX PARTE
APPLICATION TO CONTINUE
SUMMARY JUDGMENT FILING
DEADLINE**

18 AND CONSOLIDATED CASE.

BEFORE JUDGE A. HOWARD MATZ

Date: Ex Parte Opposition
Time: Ex Parte Opposition
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

1 190, pages 3, 9-10, 12, 19-21. Moreover, it was Amazon that contracted
2 with Google to provide search results between January 2003 and
3 September 2006. *See* Exhibits I and J to the pleading entitled Exhibits B,
4 I, J and K to the Declaration of Jeffrey N. Mausner in Support of Perfect
5 10, Inc.'s Portions of the Joint Stipulation Re: Defendant A9.com, Inc.'s
6 Motion for Protective Order on Behalf of Jonathan Leblang, filed under
7 seal pursuant to protective order on August 5, 2009 (Docket No. 341).

8 Because of Amazon's direct involvement in the infringement of
9 Perfect 10's copyrighted works, along with its ongoing refusal to act,
10 Amazon does not have a good faith basis for filing a motion for summary
11 judgment absolving it of any copyright liability. *See* emails between
12 Perfect 10's and Amazon's attorneys, attached as Exhibit C to the
13 Declaration of Timothy R. Cahn in Support of Defendants Amazon.com,
14 Inc. and Alexa Internet's Ex Parte Application to Continue Summary
15 Judgment Filing Deadline, pages 14-15.

16 **V. IF THE COURT CANNOT RULE ON PERFECT 10'S**
17 **SUMMARY JUDGMENT MOTION IN THE NEAR FUTURE,**
18 **PERFECT 10 REQUESTS THAT THE COURT STAY ALL**
19 **DISCOVERY IN BOTH CASES.**

20 Perfect 10 believes that a ruling on Perfect 10's Summary Judgment
21 Motion will lead to settlement. Until that ruling is made, Perfect 10 is
22 losing approximately \$3 million a year, battling a situation in which both
23 Google and the Amazon defendants are making available for free
24 everything that Perfect 10 sells. Moreover, Defendants are refusing to
25 process Perfect 10's DMCA notices. If the Court cannot rule on Perfect
26 10's Summary Judgment Motion soon, Perfect 10 proposes the following:
27 That Defendants' request to extend the summary judgment deadline be

1 granted, but that the Court also stay the massive discovery that currently
2 is taking place until it rules on Perfect 10's Summary Judgment Motion.
3 For example, in the next two weeks, Perfect 10 must defend at least four
4 days of deposition, prepare extensive responses to new written discovery,
5 and prepare for the September 22, 2009 hearing on discovery motions
6 before Judge Hillman. All of this massive discovery ultimately may be
7 mooted by the Court's ruling on Perfect 10's Summary Judgment Motion
8 or by settlement. Under these circumstances, it makes little sense to waste
9 legal and judicial resources addressing such discovery until the Court
10 issues its ruling. Therefore, if the Court does not intend to rule shortly on
11 Perfect 10's Summary Judgment Motion, Perfect 10 requests that the
12 Court couple the extension of the summary judgment deadline with the
13 stay of discovery requested by Perfect 10.¹

14 **VI. CONCLUSION.**

15 Under the assumption that the Court will make its ruling on Perfect 10's
16 Summary Judgment Motion against Alexa and Amazon by the end of the summer,
17 Perfect 10 opposes the Application because the extension of the deadline for filing
18 summary judgment motions sought by Defendants will delay the resolution of the
19 case. This delay will extend the damage that Perfect 10 is continuing to suffer,
20 because defendants are simply disregarding Perfect 10's DMCA notices. Zada
21 Decl. ¶¶3-9, Exhs. 1-3. Defendants' Application is contrary to the Court's July 9,
22 2009 Order, and is unnecessary. For these reasons, and for the additional reasons

23
24 ¹ Perfect 10 disagrees with a number of the statements made in Amazon's
25 papers, including regarding the extent of production by Perfect 10 and what
26 occurred at the telephone conference before Judge Hillman. Timothy Cahn is a
27 recent addition to Amazon's team and is likely not familiar with the massive
28 discovery productions that Perfect 10 has made in this case, particularly those
which included Perfect 10's tax returns, financial statements, work for hire
agreements, copyright registration certificates, and deposit materials.

1 discussed above, Perfect 10 respectfully requests that the Court deny Defendants'
2 *Ex Parte* Application.

3 However, if the Court does not rule on Perfect 10's Summary Judgment
4 Motion in the near future, Perfect 10 requests that the Court stay all discovery in
5 both the *Amazon* and *Google* cases, including the determination of any pending
6 discovery motions before Judge Hillman, until such time as the Court rules on
7 Perfect 10's Motion. Perfect 10 also agrees, in that circumstance, that Defendant's
8 contemplated summary judgment motions be postponed until after the Court rules
9 on Perfect 10's Summary Judgment Motion. Perfect 10 also requests that in that
10 circumstance, the parties then be given a month after that ruling is made to settle
11 the cases.

12
13 Dated: September 11, 2009

Respectfully submitted,
LAW OFFICES OF JEFFREY N. MAUSNER

14
15 By: Jeffrey N. Mausner
16 Jeffrey N. Mausner
17 Attorneys for Plaintiff Perfect 10, Inc.
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