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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(SH)
)	
)	
GOOGLE, INC., ET AL.,)	LOS ANGELES, CALIFORNIA
)	NOVEMBER 3, 2009
)	(10:04 A.M. TO 11:10 A.M.)
DEFENDANTS.)	
_____)	

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

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APPEARANCES:	SEE NEXT PAGE
COURT REPORTER:	RECORDED; COURT SMART
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.

1 APPEARANCES: (CONTINUED)
2 FOR THE PLAINTIFF: LAW OFFICES OF JEFFREY N. MAUSNER
3 BY: JEFFREY N. MAUSNER
4 VALERIE KINCAID
5 ATTORNEYS AT LAW
6 21800 OXNARD STREET
7 SUITE 910
8 WOODLAND HILLS, CALIFORNIA 91367

6 FOR GOOGLE: QUINN EMANUEL URQUHART OLIVER &
7 HEDGES
8 BY: MICHAEL T. ZELLER
9 BRAD LOVE
10 ATTORNEYS AT LAW
11 865 SOUTH FIGUEROA STREET
12 10TH FLOOR
13 LOS ANGELES, CALIFORNIA 90017

11 QUINN EMANUEL URQUHART OLIVER &
12 HEDGES
13 BY: RACHEL M. HERRICK KASSABIAN
14 ATTORNEY AT LAW
15 555 TWIN DOLPHIN
16 SUITE 560
17 REDWOOD SHORES, CALIFORNIA

14 FOR AMAZON.COM, ALEXA
15 INTERNET: TOWNSEND TOWNSEND & CREW
16 BY: MARK JANSEN
17 ATTORNEY AT LAW
18 TWO EMBARCADERO CENTER
19 8TH FLOOR
20 SAN FRANCISCO, CALIFORNIA 94111

18 ALSO PRESENT: DR. NORMAN ZADA
19 PRESIDENT, PERFECT 10
20 ERIN MC KINNEY
21 PARALEGAL
22 TOWNSEND TOWNSEND & CREW
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I N D E X
CASE NO. CV 04-9484-AHM(SH)
PROCEEDINGS: TELEPHONIC CONFERENCE

NOVEMBER 3, 2009

1 LOS ANGELES, CALIFORNIA; TUESDAY, NOVEMBER 3, 2009; 10:04 A.M.

2 THE CLERK: THIS IS A TELEPHONIC CONFERENCE
3 REGARDING CASE NUMBER CV 04-9484, PERFECT 10 VERSUS GOOGLE.
4 COUNSEL, PLEASE STATE YOUR APPEARANCE FOR THE
5 RECORD.

6 MR. JANSEN: THIS IS MARK JANSEN FOR AMAZON.COM AND
7 ALEXA INTERNET.

8 I'M IN MY OFFICE WITH ERIN MC KINNEY WHO'S A
9 PARALEGAL IN OUR OFFICE WORKING ON THE CASE.

10 THE COURT: CAN EVERYONE HEAR ME?

11 MS. KINCAID: NOT TOO WELL, YOUR HONOR.

12 THE COURT: THIS IS THE BEST WE CAN DO, SO.

13 MR. JANSEN: I CAN HEAR YOU, YOUR HONOR. THIS IS
14 MARK JANSEN. I CAN HEAR YOU. HOPEFULLY, YOU CAN HEAR ME.

15 THE COURT: I CAN HEAR YOU FINE.

16 MS. KASSABIAN: YOUR HONOR, THIS IS RACHEL HERRICK
17 KASSABIAN WITH QUINN EMANUEL.

18 ALSO ON THE CALL FROM QUINN EMANUEL ARE MIKE ZELLER
19 AND BRAD LOVE. AND I CAN HEAR YOU FINE. AND, OF COURSE,
20 WE'RE HERE ON BEHALF OF GOOGLE.

21 THE COURT: OKAY. YOU'RE A LITTLE -- I NEED TO
22 HEAR YOU A LITTLE BETTER.

23 MS. KASSABIAN: IS THIS BETTER?

24 THE COURT: YES. YES.

25 MS. KASSABIAN: OKAY.

1 MR. MAUSNER: YOUR HONOR, JEFF MAUSNER, VALERIE
2 KINCAID, AND DR. ZADA ON BEHALF OF PERFECT 10.

3 I'M HAVING SOME TROUBLE HEARING YOU, BUT WE'LL DO
4 THE BEST WE CAN.

5 THE COURT: ALL RIGHT. WELL, I'VE READ THROUGH THE
6 LATEST ROUND OF BRIEFING ON THIS BATES STAMPING ISSUE. AND
7 THAT IS THE ONLY ISSUE I'M GOING TO ADDRESS TODAY. AND I
8 DON'T NEED ANYONE REALLY TO REHASH THEIR POSITIONS.

9 I JUST WANT TO ASK ONE OR TWO QUESTIONS. AND THAT
10 IS I THOUGHT WHAT I WAS GOING TO GET ON THAT ISSUE WAS THE
11 NAME OF A NEUTRAL EXPERT WHO COULD BE APPOINTED BY ME TO
12 ADVISE ME WHAT IS -- WHAT IS POSSIBLE IN THIS AREA AT A
13 REASONABLE PRICE. AND I HAVEN'T GOTTEN THAT. I ONLY GOT A
14 DECLARATION FROM PERFECT 10 BY MR. GARCIA. NOTHING FROM
15 ANYONE ELSE. AND THE GARCIA ONE SAYS WHAT IT SAYS. AND I
16 DON'T NECESSARILY ACCEPT THAT OR REJECT IT.

17 BUT WHERE ARE YOU ON JUST GETTING --

18 MR. MAUSNER: I DIDN'T HEAR THE LAST SENTENCE THAT
19 YOU SAID.

20 THE COURT: I SAID I DON'T KNOW WHETHER I ACCEPT OR
21 REJECT MR. GARCIA'S OPINION. WHAT I DO WANT STILL THOUGH IS
22 A RECOMMENDED NEUTRAL NAME THAT WILL BE THE COURT'S EXPERT
23 WITH THAT PERSON'S FEES SPLIT EQUALLY. AND I HAVEN'T GOTTEN
24 THAT.

25 MS. KASSABIAN: YOUR HONOR, MAY I SPEAK TO THAT?

1 THE COURT: YES.

2 MS. KASSABIAN: RACHEL KASSABIAN.

3 AS I THINK YOU'RE AWARE SINCE PERFECT 10 HAS
4 SUBMITTED SOME DOCUMENTS TO THIS EFFECT, THE PARTIES HAVE
5 SPENT A GOOD PORTION OF THE PAST I DON'T KNOW 10 DAYS OR SO
6 TRYING TO AGREE ON THE SECOND PROPOSAL.

7 AS OF LAST WEEK IT BECAME CLEAR THAT AN AGREEMENT
8 ON THE SECOND PROPOSAL WAS NOT GOING TO BE FORTHCOMING.

9 THE COURT: THAT'S CLEAR TO ME.

10 MS. KASSABIAN: RIGHT. AND SO --

11 MR. MAUSNER: WAIT A MINUTE. I'M SORRY. WHAT DID
12 YOU SAY, YOUR HONOR?

13 THE COURT: THAT YOUR UNWILLINGNESS TO INCLUDE
14 EXTERNAL DISKS IN THE SECOND ALTERNATIVE IS A DEAL-BREAKER.

15 MS. KASSABIAN: RIGHT. SO -- SO --

16 MR. MAUSNER: I'M SORRY. I'M HAVING TROUBLE
17 HEARING.

18 MR. ZELLER: I'M HAVING TROUBLE HEARING ALSO.

19 THE COURT: ALL RIGHT. WHY DON'T WE --

20 MR. MAUSNER: IF YOU COULD MOVE THE PHONE CLOSER TO
21 YOU, THAT MAY HELP. THERE JUST SEEMS TO BE AN ECHO. AND
22 IT'S VERY --

23 THE COURT: ALL RIGHT. WE'LL TRY THIS.

24 MS. KINCAID: MUCH BETTER. THANK YOU, YOUR HONOR.

25 MR. ZELLER: MUCH BETTER.

1 MR. MAUSNER: OH, YES.

2 THE COURT: ALL RIGHT. THE DEAL-BREAKER IS THAT
3 PERFECT 10 IS UNWILLING TO APPLY THE ALTERNATIVE PROTOCOL,
4 NUMBER 2, TO EXTERNAL DISKS, WHICH IS THE WHOLE GAME RIGHT
5 THERE.

6 MS. KASSABIAN: RIGHT. AND, SO, YOUR HONOR, WE
7 TRIED TO WORK SOMETHING OUT. IT APPEARED THAT THAT IS NOT
8 GOING TO HAPPEN UNLESS THE COURT ORDERS IT. AND, SO, WE HAVE
9 SPENT A GOOD PORTION OF THE LAST WEEK MAKING PHONE CALLS TO
10 VARIOUS ADOBE OFFICES, CALL CENTERS, HELP DESKS, ET CETERA
11 TRYING TO FIND AN EXPERT.

12 WHAT WE'VE -- OUR CONCLUSION AT THIS POINT IS THAT
13 ADOBE ITSELF DOES NOT OFFER SUCH A SERVICE, THAT THEY
14 REFERRED US TO A NUMBER OF DIFFERENT THIRD PARTY -- I GUESS I
15 WOULD CALL THEM THIRD-PARTY AFFILIATES -- CONSULTING
16 COMPANIES THAT WORK VERY CLOSELY WITH ADOBE AND ARE FAMILIAR
17 WITH THEIR SERVICES. SO, WE'RE GATHERING THOSE NAMES NOW.

18 AND AS WE UNDERSTOOD YOUR HONOR'S ORDER, YOU WANT A
19 NEUTRAL EXPERT. YOU DON'T WANT SOMETHING --

20 THE COURT: CORRECT.

21 MS. KASSABIAN: -- DUELING EXPERTS LIKE MR. GARCIA
22 VERSUS SOMEONE FROM --

23 THE COURT: CORRECT.

24 MS. KASSABIAN: SO, WE HAVEN'T, YOU KNOW, QUOTE,
25 UNQUOTE, ENGAGED ANYONE BECAUSE OUR PLAN AS WE UNDERSTOOD IT

1 WAS TO SUBMIT THOSE NAMES TO YOUR HONOR. AND, THEN, YOUR
2 HONOR AND THE PARTIES JOINTLY COULD SORT OF INSTRUCT THAT
3 PERSON ON WHAT THE --

4 THE COURT: RIGHT.

5 MS. KASSABIAN: -- COURT WOULD LIKE.

6 THE COURT: ALL RIGHT. SO, THAT IS WHAT I'M
7 LOOKING FOR. AND, OBVIOUSLY, I'M NOT GOING TO GET THAT IN
8 THE NEXT COUPLE OF DAYS. SO, LET'S JUST TALK ABOUT GOING
9 FORWARD AND THE RECENT FINANCIAL DOCUMENT PRODUCTION.

10 MS. KASSABIAN: YOUR HONOR, COULD I JUST ADD ONE
11 MORE THING. WE WILL HAVE THOSE NAMES FOR YOU THIS WEEK.

12 THE COURT: OKAY.

13 MS. KASSABIAN: WE'RE VERY CLOSE TO THAT. AND WE
14 CAN PROVIDE THOSE THIS WEEK.

15 THE COURT: ALL RIGHT.

16 MS. KASSABIAN: BUT ANYWAY.

17 THE COURT: AND, HOPEFULLY, ALL THREE SIDES WOULD
18 SAY, YEAH, THIS IS A NEUTRAL, AND THIS IS WHAT THIS NEUTRAL
19 SAYS, AND THIS IS WHAT THE NEUTRAL SAYS IT WILL COST. AND
20 I'LL BLESS IT, AND WE'LL MOVE ON.

21 BUT IN TERMS OF THE RECENT FINANCIAL DOCUMENT
22 PRODUCTION AND UPCOMING DEPOSITIONS, I'D LIKE TO HAVE
23 SOMETHING IN PLACE TODAY.

24 MR. JANSEN: YOUR HONOR, THAT'S -- THIS IS MARK
25 JANSEN. AND THAT'S THE REASON WE WANTED TO RAISE THE ISSUE

1 IS BECAUSE WE UNDERSTAND THERE'S OBVIOUSLY A LARGE VOLUME OF
2 PREVIOUSLY PRODUCED DOCUMENTS. BUT OBVIOUSLY NUMBERING IS
3 CRITICAL, AND I THINK EVERYONE RECOGNIZES THAT. AND TO THE
4 EXTENT WE CAN DO IT GOING FORWARD WE SHOULD DO IT. AND --

5 THE COURT: OKAY. SO, WHAT WAS PRODUCED IS 2,600
6 PAGES OF FINANCIAL DOCUMENTS THAT WERE PRODUCED -- ON A DISK?

7 MR. JANSEN: THAT'S RIGHT. YES. THERE WERE TWO
8 PARTS TO YOUR ORDER. THE FIRST PART WAS TO PRODUCE
9 UNREDACTED FINANCIALS, AS YOU RECALL. AND THOSE ARE PRODUCED
10 ON A DISK IN A SERIES OF ADOBE FILES --

11 MS. MC KINNEY: ONE.

12 MR. JANSEN: -- ONE ADOBE FILE. ONE ADOBE FILE
13 ACCORDING TO ERIN MC KINNEY, WHO'S HERE AS A PARALEGAL. AND
14 THEY WERE UNNUMBERED. SO, WE NUMBERED THEM, AND WE USED
15 EXACTLY THE PROCESS THAT GOOGLE HAS BEEN TALKING ABOUT. WE
16 USED THE ADOBE NUMBERING SYSTEM AND NUMBERED THOSE DOCUMENTS
17 AT MINIMAL COST. SO, WE'RE NOT SEEKING REIMBURSEMENT OF THAT
18 COST. BUT IT JUST SEEMS AS IF THE PLAINTIFF SHOULD BE
19 NUMBERING THE DOCUMENTS AS THEY'RE PRODUCED.

20 THEY DID PRODUCE DOCUMENTS IN ADVANCE OF AN
21 EMPLOYEE DEPOSITION OF SHEENA CHOU. AND THEY DID NUMBER
22 THOSE. THAT WAS A VERY SMALL PRODUCTION. ALSO, A PDF. BUT
23 THEY DIDN'T NUMBER THE FINANCIAL DOCUMENTS.

24 THEN, THE SECOND COURT-ORDERED PRODUCTION TOOK
25 PLACE LAST FRIDAY, THE 23RD. AND THOSE WERE I GUESS THE

1 DOCUMENTS THAT WERE ORDERED PRODUCED ON ONE OF THE RECENT
2 DISCOVERY ORDERS. AND IT WAS QUITE A LARGE PRODUCTION. IT
3 WAS ALSO UNNUMBERED.

4 THE COURT: WHAT WERE THE -- WERE THOSE FINANCIAL
5 OR SOMETHING ELSE?

6 MR. JANSEN: THAT'S THE PROBLEM. ONE OF THE
7 PROBLEMS, AND ONE OF THE REASONS FOR THE EX PARTE APPLICATION
8 IS WE -- THEY WERE SUPPOSED TO BE RESPONSIVE TO A SERIES OF
9 DOCUMENT REQUESTS THAT GOOGLE HAD BROUGHT AS PART OF ITS
10 MOTION. AND YOU MAY RECALL -- A NUMBER OF DOCUMENT REQUESTS
11 THAT YOU HAD REPHRASED TO BE -- PERFECT 10 WAS ORDERED TO
12 PRODUCE DOCUMENTS SUFFICIENT TO SHOW -- FOR EXAMPLE, DOCUMENT
13 REQUEST NUMBER 166, THE EFFECT OR IMPACT, IF ANY, OF ANY
14 CONDUCT OR ACTION BY GOOGLE ON THE MARKET SHARE OF PERFECT
15 10.

16 THE COURT: OKAY.

17 MR. JANSEN: DOCUMENT REQUEST NUMBER 165 -- I'M
18 READING FROM PAGE 6 OF YOUR ORDER DATED 10/6/2009, DOCUMENT
19 560.

20 FOR EXAMPLE, DOCUMENT NUMBER 1- -- REQUEST NUMBER
21 165, YOUR ORDER WAS TO PRODUCE DOCUMENTS SUFFICIENT TO SHOW
22 THE MARKET SHARE OF PERFECT 10 IN ANY MARKET.

23 WELL, THESE WERE BASICALLY FINANCIAL TYPES. WE
24 WERE EXPECTING FINANCIAL-TYPE -- MARKET SHARE-TYPE DOCUMENTS
25 FOR THE MOST PART.

1 THE COURT: UH-HUH.

2 MR. JANSEN: BUT THEY'RE -- IN THE DECLARATION THAT
3 WAS SUBMITTED BY I THINK GOOGLE'S COUNSEL TOM NOLAN SHOWS
4 THAT -- IT WAS A MISH-MASH. IT WAS A COMPLETELY UN- -- IT
5 WAS JUST KIND OF A DUMP. WE HAD HUGE AMOUNTS OF PHOTOGRAPHS
6 AND IMAGES THAT DON'T SEEM TO BE RESPONSIVE TO REQUESTS.

7 SO, ONE THING WE'RE ASKING FOR IS THAT THE
8 PLAINTIFF ACTUALLY -- WE THINK, NUMBER ONE, THAT PLAINTIFF
9 NEEDS TO NUMBER THE DOCUMENTS.

10 AND, NUMBER TWO -- AND REPRODUCE THEM NUMBERED.
11 AND, NUMBER TWO, WITH THAT PRODUCTION, WE THINK THEY SHOULD
12 BE ORDERED -- PLAINTIFF -- BECAUSE HE DUMPED A LOT OF THINGS
13 THAT AREN'T RESPONSIVE TO EACH REQUEST -- SHOULD BE ORDERED
14 TO IDENTIFY WHAT DOCUMENTS ARE RESPONSIVE TO THE REQUESTS
15 THAT WERE NARROWED BY THE COURT, TO ORDER PRODUCTION OF THOSE
16 DOCUMENTS SUFFICIENT TO SHOW IN EVERY INSTANCE.

17 THAT'S ONE AREA OF RELIEF WE'RE ASKING FOR
18 IMMEDIATELY.

19 THE NEXT THING IS THAT WE'VE SCHEDULED THE
20 ACCOUNTANT'S DEPOSITION, BRUCE HERSH, FOR NOVEMBER 19TH AND
21 20TH, THE WEEK BEFORE THE THANKSGIVING WEEK. THAT'S THURSDAY
22 AND FRIDAY -- OR MAYBE WEDNESDAY AND THURSDAY.

23 IN THE COURT'S ORDER, THE SAME COURT ORDER WITH
24 DOCUMENT NUMBER 598 REQUIRED THAT PERFECT 10 PRODUCE BY THE
25 9TH OF THIS MONTH. SO, THAT'S LIKE NEXT MONDAY THEY'RE

1 ORDERED TO PRODUCE ANY ADDITIONAL DOCUMENTS THAT MR. HERSH IS
2 EXPECTED TO RELY UPON IN ANSWERING QUESTIONS AT HIS
3 DEPOSITION. AND THOSE ALSO NEED TO BE NUMBERED.

4 SO, WE NEED TO GET AN ORDER, NUMBER ONE, THAT --
5 WE'D LIKE TO ASK THE COURT TO ISSUE AN ORDER, NUMBER ONE,
6 THAT THE DOCUMENTS PRODUCED FROM NOW FORWARD, INCLUDING THE
7 DOCUMENTS FOR MR. HERSH'S DEPOSITION, BE NUMBERED BY PERFECT
8 10 ON A GO-FORWARD BASIS.

9 NUMBER TWO, WE'RE ASKING THAT THE DOCUMENTS
10 PRODUCED LAST FRIDAY BE NUMBERED AND REPRODUCED BY THE
11 PLAINTIFF.

12 AND, NUMBER THREE, WE ASK THAT WITH RESPECT TO THE
13 DOCUMENTS PRODUCED LAST FRIDAY, THAT PERFECT 10 BE ORDERED TO
14 IDENTIFY WHICH DOCUMENTS ARE RESPONSIVE TO --

15 THE COURT: I GOT IT. I UNDERSTAND WHAT YOU WANT.

16 MR. JANSEN: THANKS.

17 THE COURT: LET ME HEAR FROM MR. MAUSNER.

18 MR. MAUSNER: OKAY. GOOD MORNING, YOUR HONOR.

19 FIRST OF ALL, THIS IS DONE AS AN EX PARTE
20 APPLICATION. THEY'RE SAYING THAT THERE'S AN EMERGENCY. WHAT
21 I WANT TO KNOW IS WHY DO THEY NEED THE FINANCIAL STATEMENTS
22 BATES NUMBERED TO TAKE A DEPOSITION. WHAT THEY'RE GOING TO
23 DO IS THEY'RE GOING TO PICK OUT DOCUMENTS THAT THEY WANT TO
24 USE. THEY'RE GOING TO MARK THEM AT THE DEPOSITION WITH AN
25 EXHIBIT NUMBER. SO, WHAT DIFFERENCE DOES IT MAKE IF THEY'RE

1 BATES NUMBERED OR NOT.

2 I'D LIKE THEM TO ARTICULATE EXACTLY WHAT DIFFERENCE
3 IT MAKES TO THEM IN TAKING THIS DEPOSITION WHETHER THE
4 DOCUMENTS ARE BATES NUMBERED.

5 THE COURT: OKAY. YOU CAN RESPOND, MR. JANSEN.

6 MR. JANSEN: YES, IF YOU'D LIKE ME TO, YOUR HONOR.

7 THE COURT: YES.

8 MR. JANSEN: WELL, I THINK IT'S PRETTY CLEAR. IN
9 THE DISCUSSION WE'VE HAD, FOR EXAMPLE, AT THE HEARING ON
10 SEPTEMBER 22ND THAT WE NEED DOCUMENTS NUMBERED THAT ARE
11 PRODUCED SO THAT WE HAVE THEM FOR -- WE HAVE THEM NUMBERED
12 FOR INTEGRITY PURPOSES. NOT JUST AT THE DEPOSITION BUT GOING
13 FORWARD AS WE GET READY FOR TRIAL AND FOR USE IN SUMMARY
14 JUDGMENT MOTIONS.

15 BECAUSE OF THE NATURE OF THE DEPOSITIONS AND THE
16 TIME LIMITS IMPOSED BY THE FEDERAL RULES, IT'S QUITE LIKELY
17 THAT DOCUMENTS THAT ARE PRODUCED NEXT WEEK OR THAT HAVE BEEN
18 PRODUCED ALREADY IT MAY OR MAY NOT BE MARKED AT THE
19 DEPOSITIONS -- WILL BE MAYBE REFERRED TO AS SUMMARY JUDGMENT
20 MOTIONS, FOR EXAMPLE, AND BE AUTHENTICATED AS HAVING BEEN
21 PRODUCED BY THE PLAINTIFF. AND WITHOUT SOME NUMBERING SYSTEM
22 IT'S VERY HARD TO CONFIRM THAT THAT'S THE CASE.

23 SO, YOU KNOW, I THINK WHAT'S KIND OF -- NUMBERING
24 AND BEING ABLE TO AUTHENTICATE THE DOCUMENT CAME FROM THE
25 PLAINTIFF'S PRODUCTION IS JUST A VERY IMPORTANT PART OF ANY

1 COMPLEX LITIGATION OR ANY LITIGATION AT ALL REALLY. AND, SO,
2 IT'S BETTER HAVING THE NUMBERING DONE NOW RATHER THAN, AGAIN,
3 TO HAVE TO FIGHT ABOUT IT LATER.

4 THE EMERGENCY IS THAT THEIR DOCUMENT PRODUCTIONS
5 ARE HAPPENING NOW, AND THEY'RE GOING TO BE HAPPENING NEXT
6 MONDAY. AND I'M NOT SURE WHAT'S GOING TO BE COMING DOWN THE
7 ROAD. BUT I THINK WE NEED A PROTOCOL GOING FORWARD AS SOON
8 AS POSSIBLE.

9 MS. KASSABIAN: YOUR HONOR, COULD I ADD SOMETHING.
10 THIS IS RACHEL KASSABIAN.

11 THE COURT: YES.

12 MS. KASSABIAN: AS TO WHY WE NEED THIS NUMBERING
13 NOW, IN ADDITION TO THE FACT THAT OBVIOUSLY NOT NUMBERING
14 THEM ON A GOING-FORWARD BASIS JUST CAUSES THIS SAME PROBLEM
15 TO FESTER AND GROW.

16 YOU KNOW, WE HAVE BEEN -- YOUR HONOR ISSUED AN
17 ORDER INDICATING THAT THE DEFENDANTS HAVE, AT LEAST FOR THIS
18 FIRST HALF, A STRICT TIME LIMIT OF I THINK IT WAS 10 OR 11
19 HOURS. AND I'LL TELL YOU HAVING LOOKED AT THESE FINANCIAL
20 DOCUMENTS A LOT OF THESE ARE GENERAL LEDGERS. THEY'RE
21 BALANCE STATEMENTS. THEY ARE DOCUMENTS THAT ALL KIND OF LOOK
22 THE SAME AT FIRST GLANCE. SO, TRYING TO SORT THROUGH THESE
23 AND REFER TO THESE DURING A DEPOSITION IS GOING TO BE VERY,
24 VERY TIME CONSUMING IF THEY ARE NOT NUMBERED.

25 SO, YOU KNOW, YOU'VE GOT THE -- YOU'VE GOT, LET'S

1 SEE, A GENERAL LEDGER THAT MAY BE A HUNDRED FIFTY PAGES THICK
2 FOR ONE YEAR AND ANOTHER LEDGER FOR ANOTHER YEAR AND THEN
3 SUPPORTING AND BACK-UP DOCUMENTS FOR THOSE FINANCIALS.
4 YOU'RE GOING TO HAVE TO SIT THERE AND KIND OF READ INTO THE
5 RECORD WHAT YOU'RE SEEING IN ORDER FOR EVERYONE TO MAKE SURE
6 THAT THEY'RE LOOKING AT THE SAME DOCUMENT. AND THAT'S WHAT
7 CONTROL NUMBERS ARE FOR.

8 THE COURT: WELL, LET ME ASK THIS.

9 MR. MAUSNER: MAY I RESPOND TO THAT? THAT'S JUST
10 NOT TRUE. AT A DEPOSITION YOU NUMBER AN EXHIBIT. THIS IS
11 EXHIBIT NUMBER 1 TO THIS DEPOSITION. OR YOU CONTINUE THE
12 NUMBERS FROM THE PREVIOUS DEPOSITION. THEY CANNOT ARTICULATE
13 ANY REASON THAT THESE THINGS HAVE TO BE NUMBERED FOR THE
14 DEPOSITION.

15 AND I WANT TO -- YOU KNOW, I WANT TO REITERATE
16 AGAIN, THERE'S NOTHING IN THE FEDERAL RULES OF CIVIL
17 PROCEDURE THAT REQUIRES THAT A PRODUCING PARTY BATES NUMBER
18 DOCUMENTS.

19 THE COURT: THE PROBLEM IS THAT YOU'VE DUMPED
20 EVERYTHING ONTO ONE DISK. AND THEY DON'T EVEN KNOW WHAT
21 DOCUMENTS ARE RESPONSIVE. SO, ASIDE FROM THE BATES NUMBERED

22 --

23 MR. MAUSNER: MOST OF THEM ARE RESPONSIVE. LET ME
24 GIVE YOU SOME OF THE THINGS THAT WE WERE ORDERED TO PRODUCE
25 DOCUMENTS FOR. WE GOT -- OKAY. DOCUMENT REQUEST NUMBER

1 110.

2 "PERFECT 10 IS ORDERED TO PRODUCE DOCUMENTS
3 SUFFICIENT TO SHOW THE FACT ALLEGED IN
4 PARAGRAPH 47 OF ITS ANSWER TO GOOGLE'S
5 COUNTERCLAIM, I.E., THAT THE DAMAGES CAUSED
6 BY ACTIVITIES ALLEGED IN THE AMENDED COMPLAINT
7 FAR EXCEED ANY BENEFIT TO PERFECT 10 FROM
8 GOOGLE."

9 OKAY. SO, EVERY INFRINGEMENT IS A DAMAGE THAT
10 EXCEEDS ANY BENEFIT -- WHICH THERE REALLY ISN'T ANY -- THAT
11 GOOGLE PROVIDES TO PERFECT 10.

12 SO, THESE REQUESTS WERE SO BROAD THAT JUST ABOUT
13 EVERYTHING PRODUCED IS RESPONSIVE. THEY'RE IN FOLDERS THAT
14 ARE LABELED -- FOLDERS AND SUBFOLDERS THAT ARE LABELED AS TO
15 WHAT THEY WERE JUST AS WE SHOWED YOUR HONOR IN COURT. AND
16 THE PRODUCTION IS IN VERY GOOD, UNDERSTANDABLE CONDITION. IF
17 THEY WOULD LOOK AT -- IF THEY LOOK AT WHAT FOLDERS THINGS
18 FALL INTO.

19 YOUR HONOR, I REMEMBER WHEN DOCUMENTS WERE IN PAPER
20 FORM. AND THE WAY A PRODUCTION COULD BE DONE IS THE
21 PRODUCING PARTY WOULD TELL THE REQUESTING PARTY, OKAY. WE
22 HAVE THE DOCUMENTS OVER AT OUR OFFICE. YOU CAN COME OVER AND
23 INSPECT AND COPY.

24 SO, THE REQUESTING PARTY SENDS OVER THEIR COPY
25 SERVICE. IF THEY WANT THEM BATES NUMBERED, THE COPY SERVICE

1 AT THE SAME TIME OR AFTER IT COPIES THEM PUTS THE BATES
2 NUMBER ON THERE.

3 I DON'T KNOW HOW THIS WHOLE THING GOT TURNED AROUND
4 SOMEHOW. WE HAVE TO BATES NUMBER FOR THEM. IT'S SOMETHING
5 THAT THEY WANT. AND IF THEY WANT IT DONE, THEY SHOULD DO IT.

6 WE PRODUCED THE DOCUMENTS. WE PRODUCED MILLIONS OF
7 DOCUMENTS, WHICH IS A COMPLETE OPPOSITE OF WHAT THEY'VE DONE,
8 WHICH IS NOT PRODUCE ANYTHING BASICALLY, ESPECIALLY AMAZON.

9 AND NOW WE'RE GETTING STUCK WITH WE HAVE TO DO
10 SOMETHING THAT THE FEDERAL RULES NEVER EVEN CONTEMPLATED. IF
11 THEY WANT SOMETHING DONE, IF THEY WANT THE PRODUCTION
12 ARRANGED A DIFFERENT WAY THAN WE GAVE IT TO THEM, IF THEY
13 WANT OTHER WORK DONE WITH THESE DOCUMENTS, THAT IS THEIR
14 BURDEN. IF THEY WANT THE DOCUMENTS NUMBERED, LET THEM NUMBER
15 IT.

16 ONE THING, YOUR HONOR, IN THE SEPTEMBER 22 HEARING
17 YOU SAID YOU ORDERED THEM TO DO THE STAMPING. AND I THINK
18 YOU SHOULD GO BACK TO THAT. IF THEY WANT THESE THINGS
19 NUMBERED, THAT'S THEIR CHOICE AND THEIR BURDEN.

20 THE COURT: WELL, AT A MINIMUM I WOULD WANT TO KNOW
21 THAT THE DOCUMENTS WERE SEGREGATED AS RESPONSIVE TO CERTAIN
22 REQUESTS.

23 MS. KASSABIAN: YOUR HONOR --

24 MR. MAUSNER: YOUR HONOR, THE FEDERAL RULES SAY
25 THAT THEY CAN EITHER BE PRODUCED IN THE MANNER IN WHICH THEY

1 ARE KEPT BY THE PRODUCING PARTY --

2 THE COURT: WHICH THEY HAVE NOT BEEN HERE.

3 MR. MAUSNER: YES, THEY HAVE.

4 THE COURT: NO, THEY HAVE NOT. I MEAN, I CAN
5 UNDERSTAND WHY PERFECT 10 THINKS --

6 MR. MAUSNER: THOSE FILES --

7 THE COURT: -- BUT IT'S NOT.

8 MR. MAUSNER: -- KEPT AT PERFECT 10.

9 THE COURT: WHAT?

10 MR. MAUSNER: THE FILES THAT WE PRODUCED ARE
11 EXACTLY AS THEY ARE AT PERFECT 10.

12 THE COURT: BUT THEY'RE ALL JUMBLED TOGETHER ON ONE
13 DISK.

14 DR. ZADA: BUT, YOUR HONOR, CAN I SPEAK FOR A
15 SECOND?

16 THE COURT: NO.

17 DR. ZADA: PARDON?

18 THE COURT: NO.

19 MR. MAUSNER: WELL, THERE'S NO -- THE EVIDENCE IS
20 THAT THE RESPONSIVE DOCUMENTS WERE COPIED FROM PERFECT 10'S
21 COMPUTERS ONTO A DISK IN THE FILES THAT THEY'RE IN ON PERFECT
22 10'S COMPUTERS.

23 THE COURT: AND THROWN INTO A DOCUMENT-DUMP DISK SO
24 THAT NO ONE KNOWS WHAT'S RESPONSIVE TO WHAT.

25 MR. MAUSNER: WHO'S SPEAKING? YOUR HONOR?

1 THE COURT: THAT'S ME, YES.

2 MR. MAUSNER: WELL, THAT'S JUST NOT THE CASE.

3 THE COURT: WELL, AM I WRONG, MS. KASSABIAN?

4 MS. KASSABIAN: YES. YOUR HONOR, YOU'RE CORRECT.

5 AND I ACTUALLY HAVE THE HARD DRIVE UP ON MY SCREEN RIGHT NOW.

6 AND I'M LOOKING AT THE TOP-LEVEL FOLDERS. ONE OF THEM IS
7 JUST CALLED "AMAZON." ONE OF THEM IS CALLED "GOOGLE." ONE
8 OF THEM IS CALLED "RAPID SHARE." ONE OF THEM IS CALLED "USE
9 NET."

10 IF YOU OPEN SOME OF THESE FOLDERS, THERE ARE
11 MULTIPLE SUBFOLDERS. AND IN ONE INSTANCE I THINK IN THE USE
12 NET FILE, THERE'S A -- IF YOU GO -- CLICK THROUGH TWO LEVELS
13 OF FOLDERS, THERE ARE 7,600 OBJECTS IN THIS FOLDER THAT ALL
14 APPEAR TO HAVE SOMETHING TO DO WITH USE NET.

15 NONE OF THESE CATEGORIES OR FOLDERS HAVE ANY
16 BEARING ON THE COURT'S ORDER REGARDING SPECIFIC FINANCIALS,
17 LIKE REQUEST 87, "DOCUMENTS REGARDING PROJECTIONS OF SALES,
18 REVENUES AND PROFITS." THERE'S NO FOLDER FOR THAT OR ANY
19 DESCRIPTION OF THAT.

20 REQUEST 95, "DOCUMENTS SUFFICIENT TO SHOW 25
21 LARGEST CORPORATE AND BUSINESS CUSTOMERS." THERE'S NO FOLDER
22 INDICATING THAT.

23 SO, YOU'RE RIGHT. IT'S A DUMP. IT'S 18 GIGABITS.
24 IT'S FOLDERS THAT DON'T CORRESPOND TO WHAT YOUR HONOR
25 ORDERED.

1 AND, YOU KNOW, WE'VE GOT A DEPOSITION COMING UP
2 VERY SOON, AND IT WOULD TAKE US MANY, MANY DAYS TO CLICK
3 THROUGH EVERY SINGLE ONE OF THESE HUNDREDS OF THOUSANDS OF
4 FILES TO TRY TO --

5 THE COURT: WELL, THIS TO ME IS MORE URGENT AND
6 MORE PROBLEMATIC THAN EVEN THE BATES-STAMPING ISSUE.

7 DR. ZADA: MAY I SPEAK, PLEASE?

8 THE COURT: NO.

9 WHAT I'M SAYING --

10 MR. MAUSNER: MAY I CONFER WITH DR. ZADA TO --

11 THE COURT: NO. YOU KNOW THIS AS WELL AS HE DOES.
12 ALL RIGHT.

13 MR. MAUSNER: RIGHT.

14 DR. ZADA: I PRODUCED THE DOCUMENTS, YOUR HONOR. I
15 KNOW WHAT'S IN THE FOLDERS.

16 THE COURT: WHAT IS IN THE FOLDERS IS NOT LABELED.

17 DR. ZADA: YOUR HONOR, HAVE YOU LOOKED AT THE HARD
18 DRIVE?

19 THE COURT: NO, I HAVE NOT LOOKED AT THE HARD
20 DRIVE.

21 DR. ZADA: WELL, HOW DO YOU KNOW THAT, YOUR HONOR?

22 THE COURT: DO YOU HAVE -- IF DOCUMENTS -- REQUEST
23 NUMBER 60 IS "DOCUMENTS SUFFICIENT TO SHOW THE
24 PERFECT 10 MARKET SHARE."

25 IS THERE A SUBFOLDER ON THE DISK SAYING THESE ARE

1 THE UNIVERSE OF DOCUMENTS RESPONSIVE TO DOCUMENT REQUEST
2 NUMBER 60 -- OR 560.

3 DR. ZADA: I HAVE TO SPEAK, YOUR HONOR. PLEASE.

4 THE COURT: BRIEFLY.

5 DR. ZADA: WE HAVE NO DOCUMENTS TO SHOW PERFECT
6 10'S MARKET SHARE. THE ONLY THING WE HAD WAS WE HAD CURTIS
7 CIRCULATION DOCUMENTS WHICH ALREADY HAD BEEN PRODUCED TO THE
8 COURT. AND WE HAD OUR FINANCIAL DOCUMENTS WHICH SHOWED THAT
9 OUR MARKET SHARE WAS VERY LOW.

10 WE DIDN'T HAVE ANY DOCUMENT WHICH SAID THIS IS OUR
11 MARKET SHARE. AND, SO, THEY'RE CLEARLY MISCONSTRUING OUR
12 PRODUCTIONS. AND I THINK WE NEED TO GET AN INDEPENDENT
13 EXPERT, YOUR HONOR, BECAUSE -- TO EVALUATE OUR PRODUCTIONS
14 VERSUS GOOGLE'S PRODUCTIONS AND AMAZON'S. BECAUSE I CAN'T --

15 THE COURT: I'M NOT TALKING ABOUT THEIR DOCUMENT
16 PRODUCTIONS TODAY. IT'S JUST --

17 DR. ZADA: BUT, YOUR HONOR --

18 THE COURT: IT'S NOT BEFORE ME.

19 DR. ZADA: -- GOOGLE'S DOCUMENT PRODUCTION WAS
20 INFINITELY WORSE THAN OURS.

21 THE COURT: DID YOU HEAR ME, DR. ZADA?

22 DR. ZADA: PARDON?

23 THE COURT: DID YOU HEAR ME JUST NOW? WE'RE NOT
24 TALKING ABOUT THEIRS TODAY. WE'RE TALKING ABOUT YOURS.

25 DR. ZADA: BUT WE NEED AN EXPERT TO GO THROUGH OUR

1 DOCUMENT PRODUCTION AND TO VERIFY THAT, IN FACT, WE DID A
2 VERY GOOD JOB. I CAN'T SIT HERE AND HAVE THESE PEOPLE MAKE
3 THESE STATEMENTS WITH NO SUPPORT WHATSOEVER, NO DECLARATIONS,
4 NOTHING. AND YOUR HONOR HASN'T EVEN LOOKED AT THE DRIVE, AND
5 YOU'RE REACHING A CONCLUSION THAT SOMEHOW OUR DOCUMENT
6 PRODUCTION WAS UNSATISFACTORY.

7 OUR DOCUMENT PRODUCTIONS ARE OUTSTANDING, YOUR
8 HONOR. AND I'D LIKE TO HAVE AN EXPERT, AN INDEPENDENT EXPERT
9 HIRED BY THE COURT TO VERIFY THIS.

10 MR. JANSEN: YOUR HONOR, THIS IS MARK JANSEN.

11 IF I COULD JUST -- I THINK -- IT IS STANDARD AND
12 IT'S APPROPRIATE UNDER THE FEDERAL RULES OF CIVIL PROCEDURE
13 FOR A PARTY THAT PRODUCES DOCUMENTS IN RESPONSE TO DOCUMENT
14 REQUESTS AND, IN PARTICULAR, IN RESPONSE TO ORDERED
15 PRODUCTION OF DOCUMENT REQUESTS TO IDENTIFY WHAT DOCUMENTS
16 ARE BEING PRODUCED THAT ARE RESPONSIVE TO THE PARTICULAR --

17 THE COURT: THAT'S WHAT I'M TALKING ABOUT.

18 MR. JANSEN: AND I THINK THAT'S WHAT SHOULD BE
19 REQUIRED HERE. AND THERE ARE SOME -- THERE ARE VERY SPECIFIC
20 DOCUMENT REQUESTS. AND JUST GOING DOWN THE LIST -- JUST
21 LOOKING AT PAGE 4 OF YOUR ORDER WHERE YOU START LISTING THE
22 DOCUMENT REQUESTS. MS. KASSABIAN MENTIONS SOME. BUT JUST
23 GOING ON, DOCUMENT REQUEST NUMBER 104 ASKS FOR "DOCUMENTS
24 SUFFICIENT TO SHOW THE FACT OF THE NUMBER OF UNIQUE VISITORS
25 PER MONTH THAT VISIT THE PERFECT 10 WEB SITE AS ALLEGED IN

1 THE COMPLAINT."

2 NUMBER 105--

3 DR. ZADA: CAN I RESPOND. THAT WAS --

4 MR. JANSEN: -- PERFECT 10 HAS SPENT MILLIONS OF
5 DOLLARS ADVERTISING AND PROMOTING ITS MARK. SO, WE SHOULD BE
6 GETTING --

7 DR. ZADA: THAT WAS PRODUCED IN THE FINANCIAL
8 DOCUMENTS.

9 MR. JANSEN: WELL, WE SHOULD BE GETTING A
10 PRODUCTION OF DOCUMENTS SHOWING WHAT THEY DID TO ADVERTISE
11 AND PROMOTE.

12 AND IF THEY'VE ALREADY PRODUCED IT, THEY SIMPLY
13 NEED TO SAY WHERE THEY PRODUCED IT OR IDEALLY THE NUMBER
14 RANGE OF THE DOCUMENT PRODUCTION.

15 THE COURT: WELL, EVEN PUTTING ASIDE THE NUMBER
16 RANGE, I WANT TO KNOW FOR THE DEPOSITIONS THAT ALL COUNSEL
17 KNOW THE UNIVERSE OF THE RESPONSES GIVEN TO EACH DOCUMENT
18 PRODUCTION -- EVERY DOCUMENT REQUEST THAT THE COURT ORDERED.

19 THAT IS NOT DIFFICULT, DR. ZADA. THAT IS NOT
20 DIFFICULT --

21 DR. ZADA: YOUR HONOR, I DIDN'T -- WELL, IT WOULD
22 NOT BE DIFFICULT SPECIFICALLY IN THE FOLLOWING SENSE. I
23 COULD WRITE A ONE-PAGE DECLARATION TO EXPLAIN WHAT WE DID AND
24 DID NOT HAVE AND WHICH FOLDERS WERE RESPONSIVE TO THOSE
25 REQUESTS.

1 THE COURT: WELL, THAT MAY HELP, YES.

2 MR. MAUSNER: RATHER THAN A DECLARATION I THINK IT
3 COULD BE DONE IN THE FORM OF A DOCUMENT RESPONSE --

4 DR. ZADA: BUT THE PROBLEM, YOUR HONOR -- AND I
5 UNDERSTAND YOUR HONOR IS TRYING VERY HARD TO SIFT THROUGH
6 THIS GIGANTIC MESS, BUT THE PROBLEM THAT I'M HAVING IS EVERY
7 TIME WE HAVE ONE OF THESE CONFERENCES, YOUR HONOR, THERE'S
8 ONLY ONE PERSON THAT KNOWS WHAT WAS PRODUCED, AND THAT WAS
9 ME. OKAY. AND IF WE HAD AN INDEPENDENT EXPERT, WE COULD GO
10 THROUGH AND SEE THAT WHEN GOOGLE PRODUCED THEIR EXCEL
11 SPREADSHEET THEY CORRUPTED IT IN SUCH A WAY THAT IT WAS
12 UNUSABLE.

13 I MEAN, OUR PRODUCTIONS -- AND THEY HAVE 13 COPIES
14 OF THE SAME THINGS. I ONLY PRODUCED ONE COPY. THEY'RE IN
15 VARIOUS FOLDERS. WE CAN FIND THEM. AND I WILL BE HAPPY,
16 YOUR HONOR, IN THIS PARTICULAR INSTANCE TO PROVIDE SOME SORT
17 OF EXPLANATION. BUT I GUARANTEE YOU THEY'RE GOING TO COME
18 BACK WITH SOME OTHER COMPLAINT WHILE AMAZON HAS PRODUCED A
19 TOTAL OF 800 DOCUMENTS IN THIS WHOLE CASE.

20 THE COURT: I DON'T WANT TO TALK ABOUT THEIR
21 DOCUMENT PRODUCTION NOW. IT'S NOT BEFORE ME, EX PARTE OR
22 NOTICE. OKAY. I KNOW YOU'RE ANGRY ABOUT THEM. SO, MR.
23 MAUSNER KNOWS WHAT TO DO AND HOW TO DO IT TO GET IT TO MY
24 ATTENTION.

25 DR. ZADA: BUT DO YOU WANT TO HAVE -- ON EVERY

1 DISCOVERY REQUEST IN THIS CASE, YOUR HONOR? I DON'T THINK
2 YOU DO. I MEAN, THE PROBLEM IS THEY SYSTEMATICALLY REFUSE TO
3 ANSWER EVERYTHING. WE DON'T HAVE THE RESOURCES TO FILE A
4 MOTION TO COMPEL ON --

5 THE COURT: -- YOU'RE JUST NOT ADVANCING --

6 DR. ZADA: -- EVERY DISCOVERY REQUEST.

7 THE COURT: YOU'RE JUST NOT ADVANCING YOUR CAUSE ON
8 THE ISSUE THAT'S BEFORE ME. OKAY. YOU'RE JUST SLINGING MUD
9 BACK, AND IT DOESN'T HELP YOUR CAUSE AT ALL. EVEN IF YOU'RE
10 RIGHT. EVEN IF YOU'RE RIGHT.

11 WHAT I WANT -- ASIDE FROM GETTING THE NAME OF A
12 NEUTRAL PERSON AND THE COST TO THE PARTIES IF THE COURT
13 APPOINTS THAT PERSON AS THE BATES-STAMPING EXPERT GURU, ASIDE
14 FROM THAT ISSUE I WANT TO KNOW THAT FOR THE HERSH DEPOSITION
15 I WANT THE FOLLOWING THINGS IN PLACE.

16 I WANT TO KNOW THAT ALL OF THE DOCUMENT PRODUCTION
17 THAT HAS BEEN MADE IN RESPONSE TO MY OCTOBER ORDERS HAVE BEEN
18 IDENTIFIED AS TO FILE FOLDER AND DOCUMENT TYPE -- FILE FOLDER
19 WITH A STATEMENT THAT THESE ARE THE ENTIRE DOCUMENTS THAT ARE
20 RESPONSIVE -- I MEAN, IN TERMS OF SUFFICIENT TO SHOW. THESE
21 ARE THE DOCUMENTS THAT HAVE BEEN PRODUCED. THIS IS THE
22 FOLDER THEY'RE IN, AND THEY ARE ONES THAT ARE RESPONSIVE TO
23 DOCUMENT PRODUCTION 560 OR 570 OR WHATEVER. AND THAT HAS TO
24 BE DONE IMMEDIATELY.

25 MR. MAUSNER: OKAY. LET ME ASK YOUR HONOR. MOST

1 OF THOSE DOCUMENTS -- MOST OF THE 27 CATEGORIES OF DOCUMENTS
2 THAT YOU HAD ORDERED HAD PREVIOUSLY BEEN PRODUCED.

3 WHAT WE CAN DO IS WE COULD TAKE THIS LAST
4 PRODUCTION, AND WE CAN SAY WHERE THE DOCUMENTS -- IF ANY
5 ADDITIONAL DOCUMENTS WERE PRODUCED WHERE THEY ARE IN THIS
6 LAST PRODUCTION.

7 NOW IS THAT -- IF THERE WERE ANY. NOW, IS THAT
8 SUFFICIENT?

9 THE COURT: I -- WELL, LET ME HEAR --

10 MS. KASSABIAN: YOUR HONOR, OF COURSE THAT'S NOT
11 SUFFICIENT. THIS IS RACHEL KASSABIAN. IF YOUR HONOR ORDERED
12 PRODUCTION OF DOCUMENTS, AND PERFECT 10 IS CLAIMING THAT THEY
13 HAD ALREADY PRODUCED THEM, BUT SIMPLY NOT IDENTIFIED WHERE
14 THEY WERE TO US WHEN THE MOTION WAS PENDING, THEN, THEY NEED
15 TO IDENTIFY WHERE THOSE DOCUMENTS ARE NOW.

16 IT DOESN'T MATTER WHEN THEY WERE PRODUCED. IF SOME
17 OF THE RESPONSIVE DOCUMENTS WERE PRODUCED IN A PRIOR
18 PRODUCTION, LIKE YOUR HONOR HAS SAID, WE NEED TO HAVE THOSE
19 DOCUMENTS FOR THE HERSH DEPOSITION. WE DON'T NEED TO BE
20 PLAYING GAMES HERE. PERFECT 10 SHOULD IDENTIFY EXACTLY WHERE
21 THE RESPONSIVE DOCUMENTS --

22 THE COURT: ALL RIGHT. OKAY. SO, LET ME --

23 MR. MAUSNER: THAT'S GOING TO TAKE --

24 DR. ZADA: -- IMPOSSIBLE THING.

25 MR. MAUSNER: THAT'S GOING TO TAKE A VERY LONG

1 TIME. WE CAN DO IT IN THE CURRENT PRODUCTION. AND THE ONLY
2 THING YOUR HONOR ORDERED FOR THE CURRENT PRODUCTION WAS
3 DOCUMENTS THAT HAD NOT PREVIOUSLY BEEN PRODUCED. SO --

4 THE COURT: BUT IT CAN'T BE THAT DIFFICULT TO SAY
5 WE ALSO PRODUCED DOCUMENTS IN AUGUST OR JULY OR WHATEVER, AND
6 THOSE -- THIS IS WHERE THEY ARE. THEY'RE ON THIS DISK, AND
7 THEY ARE RESPONSIVE TO THESE REQUESTS.

8 DR. ZADA: I THINK IT'S WAY -- YOU'RE TALKING ABOUT
9 HUNDREDS OF THOUSANDS OF FILES, YOUR HONOR. WE PRODUCED 5
10 MILLION PAGES OF DOCUMENTS IN THIS CASE. THE DEFENDANTS HAVE
11 PRODUCED NEXT TO NOTHING. WE ARE BEING PENALIZED BY
12 RESPONDING TO COURT ORDERS AND ENGAGING IN DISCOVERY IN GOOD
13 FAITH.

14 AND THERE'S NO REASON FOR THIS, YOUR HONOR. MOST
15 OF THOSE REQUESTS THAT THEY GAVE ARE COVERED IN THE FINANCIAL
16 DOCUMENTS. THE ANSWER TO MOST OF THE REQUESTS ARE THEY'RE IN
17 THE FINANCIAL DOCUMENTS.

18 WE DON'T HAVE A LIST OF THE 25 LARGEST CUSTOMERS.
19 THE ONLY THING THAT COMES CLOSE TO THAT IS ALL THE CURTIS
20 DOCUMENTS THAT WE MADE AVAILABLE TO THE COURT FOR COPYING
21 SEVERAL YEARS AGO. SO, I DON'T KNOW WHERE -- YOU KNOW, I
22 CAN'T TELL YOU WHICH BIN THEY WERE IN NOW. THEY WERE IN THE
23 PHOTO STUDIO THREE OR FOUR YEARS AGO.

24 WE DON'T HAVE THE -- WE DON'T HAVE -- I MEAN,
25 BASICALLY WHAT I DID, YOUR HONOR -- AND THAT'S WHY I FIND

1 THIS SO OBJECTIONABLE IS I'M NOT EVEN BEING GIVEN A CHANCE TO
2 EXPLAIN WHAT I PRODUCED. I PRODUCED CONTRACTS THAT I FOUND.
3 I WENT AND FOUND MORE CONTRACTS. I PRODUCED A FEW CURTIS
4 DOCUMENTS THAT I DISCOVERED. BUT MOST OF THE STUFF THAT WAS
5 PRODUCED WERE ADDITIONAL INFRINGEMENTS BECAUSE THAT'S THE
6 ONLY THING THAT HADN'T BEEN PRODUCED ALREADY. EVERYTHING
7 ELSE HAS BEEN PRODUCED. AND ALMOST EVERYTHING IS IN THE
8 FINANCIAL DOCUMENTS. ALMOST EVERY RESPONSE TO THEIR REQUEST
9 IS IN THE FINANCIAL DOCUMENTS.

10 MS. KASSABIAN: AND, YOUR HONOR, THIS IS MS.
11 KASSABIAN. OF COURSE IF PERFECT 10 WAS ABLE TO VERIFY THAT
12 IT HAD ALREADY PRODUCED RESPONSIVE DOCUMENTS, THEN, IT KNOWS
13 WHERE THOSE DOCUMENTS ARE AND SHOULD LET US KNOW.

14 DR. ZADA: YEAH, BUT THERE ARE HUNDREDS OF
15 THOUSANDS OF FILES. I MEAN, WHAT IS --

16 THE COURT: ALL RIGHT.

17 MS. KASSABIAN: THAT JUST MAKES OUR POINT, YOUR
18 HONOR. PERFECT 10 KNOWS WHERE TO FIND THESE THINGS, AND WE
19 DON'T.

20 DR. ZADA: BUT, YOU KNOW, THIS SHOULD BE A
21 DUPLICATIVE -- A RECIPROCAL THING, YOUR HONOR. THEY NEVER
22 TOLD US WHERE ANYTHING THEY PRODUCED WAS. THEY NEVER
23 PRODUCED IT. THEY WERE ORDERED TO PRODUCE --

24 THE COURT: ALL RIGHT. THIS IS WHAT --

25 DR. ZADA: -- NEVER EVEN PRODUCED IT.

1 THE COURT: THIS IS WHAT I'M ORDERING FOR TODAY.
2 I'VE ALREADY MADE MY RULING AS TO THE RECENT
3 DOCUMENT PRODUCTION IN RESPONSE TO MY RECENT ORDERS. AND
4 I'VE ALREADY SAID WHAT PERFECT 10 NEEDS TO DO.

5 EVERYONE UNDERSTANDS THAT?

6 MR. MAUSNER: OKAY. YOU WANT AN IDENTIFICATION OF
7 THE FILE FOLDER FOR EACH OF THE 20- -- FILE FOLDER OR FOLDERS
8 FOR EACH OF THE 27 REQUESTS.

9 THE COURT: AND WHICH DOCUMENT REQUEST THEY ARE
10 RESPONSIVE TO.

11 MS. KASSABIAN: AND, YOUR HONOR, IF I COULD JUST
12 CLARIFY.

13 THE COURT: YES.

14 MS. KASSABIAN: AS I MENTIONED, SOME OF THESE
15 FOLDERS CAN BE IN ADDITIONAL -- MANY ADDITIONAL FOLDERS AND
16 THEN ADDITIONAL FOLDERS AND SUBFOLDERS AND SUBFOLDERS WITHIN
17 THAT. SO, I ASSUME THAT THEY'RE GOING TO HAVE TO IDENTIFY THE
18 ACTUAL, YOU KNOW, FILE PATH OR LOCATION OF THE RESPONSIVE
19 DOCUMENTS. BECAUSE IF THEY JUST IDENTIFY A TOP-LEVEL FOLDER,
20 THERE COULD BE MANY THOUSANDS OF DOCUMENTS WITHIN THAT
21 TOP-LEVEL FOLDER.

22 THE COURT: WELL, AT THIS POINT I THINK I CAN ONLY
23 REASONABLY -- WITH THIS URGENCY I CAN ORDER THEM TO IDENTIFY
24 THE FOLDERS AND SUBFOLDERS THAT ARE RESPONSIVE TO SPECIFIC
25 DOCUMENT REQUESTS THAT HAVE BEEN ORDERED --

1 DR. ZADA: -- ONE FOLDER AND ONE SUBFOLDER LEVEL.
2 THE SUBFOLDER LEVEL OF THE MAIN FOLDER AND STOP THERE.
3 BECAUSE OTHERWISE THIS IS GOING TO GET VERY PROBLEMATIC, YOUR
4 HONOR.

5 MS. KASSABIAN: YOUR HONOR, IF THERE ARE --

6 DR. ZADA: FOLDER AND SUBFOLDER.

7 MS. KASSABIAN: IF THERE ARE FIVE LEVELS OF
8 SUBFOLDERS AND THE RESPONSIVE DOCUMENTS ARE IN THE BOTTOM
9 LEVEL SUBFOLDER, THEN, THAT'S WHAT WE NEED TO KNOW.

10 MR. MAUSNER: I DON'T --

11 MR. JANSEN: YOUR HONOR, THIS IS MARK JANSEN. I
12 THINK -- WE HEAR DR. ZADA SAYING ON THE ONE HAND THAT IT'S
13 VERY EASY TO FIND DOCUMENTS IN THE WAY HE'S GOT THE DOCUMENTS
14 ORGANIZED.

15 MR. MAUSNER: BUT THE PROBLEM --

16 MR. JANSEN: -- TOO COMPLICATED AND BURDENSOME TO DO
17 IT --

18 DR. ZADA: GOING THROUGH --

19 MR. JANSEN: -- THE INTERESTING THING HERE, YOUR
20 HONOR, IS THAT WE TOOK THE DEPOSITION OF AN EMPLOYEE AT
21 PERFECT 10 NAMED SHEENA CHOU. WE STARTED IT. WE DIDN'T
22 FINISH IT -- ABOUT TWO WEEKS AGO. I JUST GOT THE TRANSCRIPT
23 BACK TODAY, AND I HAVEN'T HAD A CHANCE TO READ IT. BUT ONE
24 THING I RECALL HER SAYING DURING THE DEPOSITION WAS THE ONLY
25 PERSON WHO UNDERSTANDS HOW THE DOCUMENTS ARE KEPT AT PERFECT

1 10 IS DR. ZADA. AND IF SHE NEEDS TO FIND THINGS SHE HAS TO
2 GO TO DR. ZADA BECAUSE HE UNDERSTANDS HOW THINGS ARE KEPT.

3 MS. KINCAID: YOUR HONOR, THIS IS VALERIE --

4 MR. JANSEN: THIS IS ONE THING THAT PUTS US AT A
5 HUGE DISADVANTAGE. AND THAT'S WHY I THINK WE NEED TO HAVE --
6 YOU KNOW, SINCE HE'S ABLE TO -- THE ONLY ONE WHO KNOWS WHERE
7 THE DOCUMENTS ARE APPARENTLY, ONLY PERFECT 10 KNOWS WHERE THE
8 DOCUMENTS ARE AND DR. ZADA IN PARTICULAR, WE NEED TO HAVE AN
9 IDENTIFICATION OF WHERE THE RESPONSIVE DOCUMENTS TO THESE
10 FINANCIAL ISSUES HAVE BEEN PRODUCED BOTH RECENTLY AND IN THE
11 PAST.

12 AND ON THAT LINE A VERY TROUBLING COMMENT JUST GOT
13 MADE BY DR. ZADA. I HAVE NO IDEA WHAT HE'S TALKING ABOUT.
14 BUT HE REFERRED TO SOMETHING CALLED A CURTIS DOCUMENT, AND HE
15 REFERRED TO SOME DOCUMENTS WERE MADE AVAILABLE SEVERAL YEARS
16 AGO.

17 I HAVE NO IDEA WHAT HE'S TALKING ABOUT, BUT NO
18 DOCUMENTS HAVE BEEN MADE AVAILABLE TO AMAZON SEVERAL YEARS
19 AGO.

20 MR. MAUSNER: THAT'S NOT TRUE AT ALL.

21 MR. JANSEN: -- THAT HE SEEMS TO BE REFERRING TO
22 SOME SORT OF DOCUMENT PRODUCTION, LIKE A HARD COPY DOCUMENT
23 PRODUCTION, AND NO SUCH DOCUMENT PRODUCTION WAS EVER MADE
24 AVAILABLE TO AMAZON.COM OR ALEXA.

25 MR. MAUSNER: OKAY. YOUR HONOR, CAN WE DEAL WITH

1 THIS ISSUE BECAUSE IT KEEPS COMING UP. THERE WAS A
2 PRODUCTION AT PERFECT 10 WHERE PERFECT 10 MADE THOUSANDS OF
3 DOCUMENTS AVAILABLE IN ITS PHOTO STUDIO AND JUST, YOU KNOW,
4 PUT THEM THERE. AND GOOGLE CAME DOWN AND COPIED THOSE
5 DOCUMENTS. GOOGLE HAS A COPY OF THOSE DOCUMENTS.

6 I KEEP ASKING MR. JANSEN -- WHO WAS ALSO WELCOME TO
7 COME DOWN IF HE WANTED BUT DIDN'T -- TO GET A COPY OF THAT
8 FROM GOOGLE.

9 NOW, MR. JANSEN, HAVE YOU ASKED GOOGLE FOR A COPY
10 OF THOSE DOCUMENTS?

11 MR. JANSEN: YOUR HONOR, LET ME RESPOND IF YOU WANT
12 A RESPONSE. DISCOVERY WAS STAYED COMPLETELY BY JUDGE MATZ AS
13 TO AMAZON.COM FOR APPROXIMATELY A YEAR AFTER JUDGE MATZ HAD
14 DENIED THE PRELIMINARY INJUNCTION REQUEST AGAINST AMAZON.COM
15 AND ITS AFFILIATES IN TOTO. SO, DISCOVERY WAS STAYED TOTALLY
16 AS TO AMAZON.COM.

17 DURING THAT PERIOD, IT'S TRUE, I GOT A LETTER FROM
18 MR. MAUSNER INDICATING THEY WERE MAKING A VERY LARGE DOCUMENT
19 PRODUCTION AVAILABLE FOR INSPECTION. BUT SINCE DISCOVERY WAS
20 STAYED AS TO AMAZON, WE DID NOT ATTEND. WE THOUGHT THE CASE
21 MIGHT VERY WELL GO AWAY DEPENDING ON THE NINTH CIRCUIT'S
22 RULING.

23 NOW, THE NINTH CIRCUIT DID NOT -- YOU KNOW, LEFT
24 OPEN A CONTRIBUTORY INFRINGEMENT CLAIM WHICH IS STILL NOW
25 PROCEEDING. BUT DISCOVERY WAS CLOSED WHEN THAT LARGE

1 PRODUCTION WAS MADE.

2 AND I'VE ASKED MR. MAUSNER REPEATEDLY THAT IF
3 THERE'S DOCUMENTS THAT ARE RESPONSIVE TO OUTSTANDING DOCUMENT
4 REQUESTS, WE NEED TO HAVE ACCESS TO THEM SO WE CAN INSPECT
5 THEM.

6 GOOGLE AS I UNDERSTAND LOOKED AT SOME DOCUMENTS AND
7 COPIED SOME BUT NOT ALL.

8 AND MR. MAUSNER WON'T EVEN SEND ME COPIES OF HIS
9 CLIENT'S DEPOSITIONS IN PRIOR CASES. I'VE ASKED HIM THAT
10 SPECIFICALLY FOR HIS CLIENT'S PRIOR DEPOSITION TESTIMONY.

11 MR. MAUSNER: -- ALL MADE AVAILABLE AND GOOGLE
12 COPIED IT. AND I'VE ASKED YOU REPEATEDLY GET IT FROM GOOGLE.
13 BECAUSE FOR US TO PUT THAT BACK TOGETHER AGAIN WOULD BE
14 VIRTUALLY IMPOSSIBLE FOR US TO KNOW EVERYTHING WE PRODUCED
15 THERE. WHY DON'T YOU JUST ASK GOOGLE FOR A COPY.

16 THE COURT: CAN I ASK AN IMPORTANT QUESTION. WHY
17 DOES MR. HERSH'S DEPOSITION HAVE TO GO NEXT WEEK OR IN TWO
18 WEEKS?

19 MR. MAUSNER: IT DOESN'T. THERE'S NO EMERGENCY ON
20 IT. BUT THEN -- WE WOULD BE READY TO GO. IF WE HAVE TO DO
21 ALL THIS OTHER WORK, I'M NOT SURE --

22 DR. ZADA: YOUR HONOR, THEY'RE COMPLETELY
23 MISSTATING THE WHOLE THING. I MEAN, ALL OF THE DOCUMENTS
24 THAT ARE GOING TO BE PRODUCED FOR MR. HERSH'S DEPOSITION ARE
25 THE KEY DOCUMENTS. THERE'S NOTHING ELSE. IT'S ALL FINANCIAL

1 DOCUMENTS, AND IT'S THE CURTIS DOCUMENTS THAT WERE MADE
2 AVAILABLE. THERE WAS HUNDREDS OF THOUSANDS OF PAGES. I
3 MEAN, WE FILLED UP THE WHOLE PHOTO STUDIO. AND AMAZON
4 DECIDED NOT TO COME BY. AND GOOGLE HAS A COPY OF IT. I
5 MEAN, YOU KNOW, WE'VE BEEN TRYING --

6 MR. MAUSNER: HOLD ON.

7 CAN WE GET THIS DECIDED NOW, YOUR HONOR? LET THEM
8 ASK GOOGLE FOR A COPY OF THAT. AND, THEN, YOU KNOW, I KEEP
9 SAYING JUST GET A COPY FROM GOOGLE. AND THEY WON'T DO IT.

10 WHAT POSSIBLE REASON DO THEY HAVE FOR NOT DOING
11 SOMETHING THAT SIMPLE OTHER THAN JUST TO MAKE THINGS
12 DIFFICULT FOR US.

13 MR. JANSEN: WHY IS IT MORE DIFFICULT, YOUR HONOR,
14 FOR ME TO ASK MR. MAUSNER TO SEND ME A COPY OF HIS CLIENT'S
15 DEPOSITIONS RATHER THAN FOR ME TO ASK GOOGLE.

16 THE COURT: I'M NOT EVEN ADDRESSING THIS. EITHER
17 WE'RE GOING TO MAKE SOME PROGRESS ON ONE ISSUE I WANTED -- OR
18 I AGREED TO HOLD THIS HEARING ON, OR WE'RE NOT.

19 MS. KASSABIAN: AND, YOUR HONOR -- THIS IS MS.
20 KASSABIAN. IF I COULD JUST STEP IN, JUST SORT OF COME FULL
21 CIRCLE. WE KEEP HEARING AGAIN FROM DR. ZADA THAT IT'S REALLY
22 EASY TO FIND THESE DOCUMENTS. SO, I THINK YOU'RE RIGHT THAT
23 WE JUST NEED AN ORDER THAT PERFECT 10 HAS TO IDENTIFY THE
24 SPECIFIC LOCATION BY FOLDER OR THE LOWEST LEVEL SUBFOLDER OF
25 RESPONSIVE DOCUMENTS TO EACH OF THE 20-ODD REQUESTS THAT YOUR

1 HONOR ORDERED ON OCTOBER 6TH. IF IT'S THAT EASY --

2 DR. ZADA: IT'S NOT THAT EASY. AND THE POINT IS,
3 FIRST OF ALL, I DON'T EVEN UNDERSTAND -- I MEAN, I CAN GIVE
4 -- I CAN GIVE AN EXPLANATION OF WHERE THINGS ARE, BUT TO
5 START TRYING TO PINPOINT IF THERE -- I DON'T KNOW, ARE WE
6 TALKING ABOUT THE CURRENT PRODUCTION, OR ARE WE TALKING ABOUT
7 EVERYTHING.

8 THE CURRENT PRODUCTION, YOU KNOW, MAYBE THERE'S,
9 I'M GUESSING, 5,000 FOLDERS. I MEAN, YOU KNOW, THEY CAN FIND
10 THIS STUFF, YOUR HONOR. I MEAN, IF I TELL THEM WHICH FILE --
11 WHICH FOLDER IT'S IN, DON'T THEY HAVE TO GO THROUGH THE
12 DOCUMENTS THEMSELVES. I MEAN --

13 MS. KASSABIAN: -- YOUR HONOR, IF DR. ZADA IS SAYING
14 ON THE ONE HAND IT'S EASY AND ON THE ONE HAND IT'S NOT --

15 DR. ZADA: I'M NOT SAYING IT'S EASY, RACHEL. I'M
16 SAYING IT'S --

17 MS. KASSABIAN: IF IT'S HARD FOR HIM --

18 DR. ZADA: I'M NOT SAYING IT'S EASY.

19 MS. KASSABIAN: IF IT'S HARD FOR DR. ZADA --

20 DR. ZADA: THAT'S WHY WE NEED -- THAT'S WHY WE NEED
21 AN INDEPENDENT EXPERT.

22 MS. KASSABIAN: DR. ZADA -- IF HE COULD PLEASE --

23 THE COURT: STOP IT.

24 MS. KASSABIAN: -- ONE AT A TIME.

25 THE COURT: STOP IT.

1 DR. ZADA: I MEAN, YOUR HONOR, SOMEBODY INDEPENDENT
2 NEEDS TO GO THROUGH WHAT WE PRODUCED AND MAKE A REPORT TO THE
3 COURT. AND WE DON'T MIND PAYING FOR HALF OF IT. BECAUSE
4 RIGHT NOW THEY'RE JUST COMPLETELY MISSTATING WHAT'S BEEN
5 PRODUCED. AND YOU HAVEN'T LOOKED AT IT. AND HOW AM I
6 SUPPOSED TO CONVINCING YOU THAT I'M TELLING YOU THIS THING WAS
7 PRODUCED IN AN ORGANIZED WAY.

8 THE COURT: MS. KASSABIAN, LET ME ASK YOU THIS.

9 FOR THE PURPOSE OF MOVING FORWARD, MAY WE ADDRESS
10 ONLY THE RECENT DOCUMENT PRODUCTION, OR DO YOU WANT ME TO
11 MAKE AN ORDER AS TO ALL PRIOR PRODUCTION IN TERMS OF THE
12 HERSH DEPOSITION?

13 MS. KASSABIAN: IT SOUNDS LIKE WE HAVE TO DEAL WITH
14 PRIOR PRODUCTION --

15 THE COURT: OKAY.

16 MS. KASSABIAN: -- BECAUSE I THINK WHAT I HEARD MR.
17 MAUSNER AND DR. ZADA SAY ON THIS CALL IS THAT THE VAST
18 MAJORITY OF WHAT YOUR HONOR ORDERED PRODUCED THEY CLAIM TO
19 HAVE ALREADY PRODUCED IT.

20 THE COURT: OKAY. IT SEEMS TO ME --

21 DR. ZADA: PRODUCED IT IN --

22 MR. MAUSNER: WAIT, WAIT.

23 THE COURT: PLEASE BE QUIET.

24 IT SEEMS TO ME THEN THAT THE BETTER -- THE WISEST
25 COURSE OF ACTION IS TO NOT HAVE HERSH DEPOSED UNTIL THIS GETS

1 SATISFACTORILY RESOLVED.

2 AND I AM NOT GOING TO -- I DON'T THINK I CAN
3 REASONABLY EXPECT THAT WHAT I WOULD LIKE TO HAVE DONE AND
4 WHAT GOOGLE WOULD LIKE TO HAVE DONE CAN REASONABLY BE
5 ACCOMPLISHED IN THE MONTH OF NOVEMBER.

6 DR. ZADA: YOUR HONOR --

7 MR. JANSEN: YOUR HONOR, THIS IS MARK JANSEN. I
8 THINK IT MAKES SENSE WHAT YOU'RE SUGGESTING. I THINK THE
9 HERSH DEPOSITION CAN WAIT UNTIL THE MIDDLE OF DECEMBER, FOR
10 EXAMPLE, OR EVEN POSSIBLY LATER DEPENDING ON -- YOU KNOW, THE
11 COURT STILL HAS NOT RULED ON A PENDING SUMMARY JUDGMENT
12 MOTION. SO, SOME OF THE PRESSURE IS OFF. BUT WE COULD
13 CERTAINLY PUT IT BACK AT LEAST A MONTH TO, SAY, DECEMBER 19TH
14 OR SO.

15 MR. MAUSNER: YOUR HONOR, IT'S JEFF MAUSNER. HAVE
16 YOU HEARD ANYTHING AT ALL ABOUT WHEN --

17 THE COURT: NO.

18 MR. MAUSNER: -- THE COURT IS GOING TO DECIDE THE
19 SUMMARY JUDGMENT MOTIONS?

20 THE COURT: NO.

21 MR. MAUSNER: WOULD IT BE POSSIBLE FOR YOU TO
22 INQUIRE OF JUDGE MATZ AS TO THAT --

23 THE COURT: NO.

24 MR. MAUSNER: -- SO WE COULD GET SOME --

25 THE COURT: NO, BUT YOU CAN. I MEAN, YOU'RE

1 WELCOME TO -- I DON'T GET INVOLVED IN THOSE ISSUES.

2 MR. MAUSNER: OKAY.

3 THE COURT: THIS IS WHAT I WANT -- THIS IS WHAT I
4 WANT TO ACCOMPLISH. I WOULD LIKE THE PARTIES TO AGREE TO PUT
5 THE HERSH DEPOSITION OVER A MONTH TO TWO MONTHS. AND I WOULD
6 LIKE -- AND I CAN'T IMAGINE THERE WOULD BE AN AGREEMENT. SO,
7 I WOULD LIKE TWO SEPARATE PROPOSALS AS TO WHAT I SHOULD ORDER
8 REGARDING THE ISSUE OF ORDERING PERFECT 10 TO RESPOND AS TO
9 WHICH FILE FOLDERS, PAST AND PRESENT, ARE RESPONSIVE TO WHICH
10 DOCUMENT REQUESTS THAT EITHER THEY AGREED -- DOCUMENT
11 REQUESTS THEY HAVE EITHER AGREED TO PRODUCE OR THAT THE COURT
12 ORDERED. AND THEN WE'LL -- WE'RE CARVING OUT THE BATES
13 STAMPING STILL, BUT I WANT --

14 DR. ZADA: IS THIS A MUTUAL ORDER WHERE --

15 THE COURT: IT'S --

16 DR. ZADA: -- HAS TO DO IT TOO, YOUR HONOR?

17 NO, SERIOUSLY. I MEAN --

18 THE COURT: YOU KNOW, YOU JUST DON'T WANT TO LISTEN
19 TO ME. I WOULD LOVE IT IF IT WAS MUTUAL. IT'S NOT BEFORE ME
20 NOW. IT'S NOT BEFORE ME NOW. IT CERTAINLY SOUNDS LIKE IT
21 SHOULD BE MUTUAL. BUT, YOU KNOW, YOU KEEP PUSHING AND
22 PUSHING AND PUSHING.

23 DR. ZADA: BUT, YOUR HONOR, THIS IS NOT EVEN A
24 MOTION. THEY NEVER EVEN FILED A MOTION. THIS IS SOME EX
25 PARTE --

1 THE COURT: THAT'S RIGHT.

2 DR. ZADA: -- BEEN PRESENTED.

3 THE COURT: THAT'S RIGHT. AND IT'S AN EX --

4 DR. ZADA: WE HAVEN'T HAD A CHANCE TO BRIEF THIS.
5 WE HAVEN'T HAD A CHANCE TO EXPLAIN TO THE COURT --

6 THE COURT: I GOT RESPONSIVE PAPERS. SO, PLEASE BE
7 QUIET. OKAY.

8 YES, I WOULD LIKE IT IF IT WAS RECIPROCAL. THAT
9 MAKES PERFECT SENSE TO ME. BUT THIS WAS AN EX PARTE. IN THE
10 SCHEME OF THINGS THIS IS PROBABLY A LEVEL TWO OR THREE EX
11 PARTE, BUT IT WAS ENOUGH TO GET MY ATTENTION. AND I'M NOT
12 DOING ANYTHING PRECIPITOUS. BUT I DO WANT TO GET THIS
13 PROBLEM SOLVED BECAUSE MY TAKE ON IT IS THAT PERFECT 10 DOES
14 NOT PRODUCE DOCUMENTS IN THE NORMAL COURSE OF BUSINESS. THEY
15 MAY HAVE PRODUCED --

16 DR. ZADA: -- WE NEED AN EXPERT.

17 THE COURT: WHAT?

18 MR. MAUSNER: IS YOUR ORDER THAT WE --

19 THE COURT: YOU GIVE ME EACH AN ORDER THAT STATES
20 WHAT THE COURT SHOULD DO IN TERMS OF MAKING SURE THAT THE
21 FILES ARE LABELED AND THAT THEY ARE INDICATED AS RESPONSIVE
22 TO ONE OR MORE SPECIFIC DOCUMENT REQUESTS, EITHER ORDERED OR
23 TURNED OVER VOLUNTARILY.

24 MR. MAUSNER: OKAY. SO, I'M NOT EXACTLY SURE WHAT
25 WE SHOULD DO NOW.

1 THE COURT: WELL, WHAT --

2 MR. MAUSNER: WE TAKE THEIR 27 REQUESTS THAT ARE IN
3 YOUR ORDER. WHAT SHOULD WE DO? SHOULD WE --

4 THE COURT: YOU SHOULD SAY, REQUEST NUMBER -- THE
5 FOLLOWING FOLDER OR FILE FOLDERS ARE RESPONSIVE TO DOCUMENT
6 REQUEST NUMBER 560 AS ORDERED BY THE COURT IN OCTOBER.

7 MS. KINCAID: YOUR HONOR, IT'S VALERIE KINCAID. I
8 GOT THE IMPRESSION THAT YOU WANT EACH SIDE TO PRESENT TO YOU
9 A PROPOSAL OF SORT OF THE SPECIFICITY WITH WHICH --

10 THE COURT: RIGHT.

11 MS. KINCAID: -- THIS TASK SHOULD BE DONE?

12 THE COURT: RIGHT. BECAUSE I CAN'T EXPECT ANYONE
13 --

14 MS. KINCAID: I UNDERSTAND.

15 THE COURT: -- JOINT PROPOSAL.

16 MS. KINCAID: AND WHEN WOULD YOU LIKE US TO SUBMIT
17 THE PROPOSAL TO YOUR HONOR BY?

18 THE COURT: WHAT'S TODAY? I THINK BY THE END OF
19 THE WEEK.

20 MS. KINCAID: OKAY. SO, CONCURRENTLY YOU'D LIKE US
21 TO SUBMIT --

22 THE COURT: YES. I WANT YOU TO EXCHANGE DRAFTS,
23 BUT I DON'T -- I KNOW THAT THIS WILL NEVER BE ONE PROPOSED
24 ORDER.

25 MR. JANSEN: OKAY. SO, WHAT -- YOUR HONOR, THIS IS

1 MARK JANSEN. SO, WHAT -- I THINK WE CAN SUBMIT FOR YOU A
2 PROPOSED ORDER BY THE END OF THE DAY TOMORROW OR CERTAINLY BY
3 THURSDAY.

4 THE COURT: OKAY. AND, THEN, GOING BACKWARDS, I
5 WOULD LIKE PROPOSALS -- AND IT'S HOPEFULLY THE SAME PROPOSAL
6 -- FOR EVERYTHING THAT HAS ALREADY BEEN PRODUCED. AND TWO
7 SEPARATE VERSIONS OF THAT I GUESS, IF NECESSARY.

8 MS. KINCAID: AND, YOUR HONOR, THIS IS WITH REGARD
9 TO EVERYONE'S PRODUCTIONS, CORRECT?

10 THE COURT: WELL, I'M GIVING IN TO DR. ZADA IF I
11 SAY YES.

12 WHAT IS THE RESPONSE TO THAT?

13 MS. KINCAID: I MEAN --

14 MR. JANSEN: OUR RESPONSE, YOUR HONOR, IS THAT WE
15 HAVE NUMBERED OUR -- THIS IS MARK JANSEN. ABSOLUTELY NOT.
16 THIS ISSUE GOES TO DOCUMENT REQUESTS THAT YOU'VE ISSUED
17 ORDERS COMPELLING PRODUCTION OF. AND WE'VE GOTTEN A MASSIVE
18 PRODUCTION. AND THE PLAINTIFF HAS JUST SAID ON THE PHONE
19 THAT HE'S ACTUALLY RELYING ON PRIOR PRODUCTIONS, PRIOR
20 MASSIVE PRODUCTIONS INCLUDING SOME HARD COPY PRODUCTIONS
21 CALLED CURTIS DOCUMENTS.

22 AND I THINK I OUGHT TO KNOW WHAT DOCUMENT THEY
23 CLAIM THEY PRODUCED BOTH CURRENTLY AND IN THE PAST THAT ARE
24 RESPONSIVE TO THESE PARTICULAR REQUESTS.

25 THE COURT: NO, BUT THE QUESTION IS, DO GOOGLE AND

1 AMAZON ALSO NEED TO DO SOMETHING MORE THAN THEY'VE DONE?

2 MS. KINCAID: YOUR HONOR --

3 MS. KASSABIAN: AND I THINK YOU'RE RIGHT, YOUR
4 HONOR -- THIS IS MS. KASSABIAN -- THAT THAT ISSUE, GOOGLE'S
5 PRODUCTION AND AMAZON'S PRODUCTION IS NOT CURRENTLY BEFORE
6 YOU. IF PERFECT 10 HAS A PROBLEM WITH FINDING SOMETHING IN
7 ONE OF OUR RESPECTIVE PRODUCTIONS, THEY CAN ASK US, AND WE'LL
8 TELL THEM AS WE'VE DONE IN THE PAST. AND IF WE CAN'T WORK IT
9 OUT, THEN, THEY CAN BRING A MOTION.

10 THE COURT: WELL --

11 MS. KINCAID: YOUR HONOR --

12 DR. ZADA: WE'RE BRINGING THE MOTION.

13 MR. MAUSNER: YES. WE'RE MAKING AN EX PARTE
14 APPLICATION RIGHT NOW.

15 MR. JANSEN: YOUR HONOR --

16 THE COURT: YOU CAN MAKE AN EX PARTE IF YOU NEED
17 TO, BUT IT BETTER RELATE TO AN UPCOMING EVENT LIKE THE HERSH
18 DEPOSITION.

19 MS. KASSABIAN: YOUR HONOR --

20 MR. MAUSNER: HOW ABOUT THEIR PENDING SUMMARY
21 JUDGMENT MOTIONS WHICH ARE EVEN MORE IMPORTANT THAN THE HERSH
22 DEPOSITION?

23 THE COURT: WELL, THEY'RE UNDER SUBMISSION. SO, I
24 DON'T THINK THAT --

25 MR. MAUSNER: NO, THEY'RE --

1 DR. ZADA: -- ASKED FOR SANCTIONS. THIS IS A MAJOR
2 ISSUE, YOUR HONOR. BECAUSE THEY PRODUCED 1 PERCENT OF ALL
3 THE URLS LISTED IN THEIR ALLEGED BLOGGER LOG. THEY PRODUCED
4 1 PERCENT OF THE DOCUMENTS TO US. 1 PERCENT. SO, WE HAVE
5 MORE OF A BONE TO PICK WITH GOOGLE ON THEIR PRODUCTIONS THAN
6 VICE-VERSA.

7 AND I THINK IT'S ONLY FAIR IF YOU'RE GOING TO MAKE
8 US DO AN ENORMOUS AMOUNT OF WORK HERE, EVEN THOUGH WE
9 PRODUCED VERY ORDERED PRODUCTIONS, THEY SHOULD AT LEAST --

10 THE COURT: THEY'RE NOT ORDERED PRODUCTIONS. STOP
11 IT. I DON'T KNOW WHAT AMAZON OR GOOGLE'S ARE. YOURS ARE NOT
12 WHAT I CONSIDER ORGANIZED.

13 DR. ZADA: YOUR HONOR, HAVE YOU LOOKED AT ALL OF
14 OUR PRODUCTIONS. YOU'RE TALKING ABOUT 4 OR 5 MILLION PAGES.

15 THE COURT: THEY ARE NOT CATEGORIZED. THEY ARE NOT
16 SEGREGATED.

17 DR. ZADA: YOUR HONOR, HAVE YOU LOOKED AT THEM?

18 THE COURT: I'M NOT GOING TO ARGUE WITH YOU.

19 MS. KINCAID: YOUR HONOR, IT'S VALERIE KINCAID. I
20 KNOW THAT YOU'RE -- THE BIG GOAL HERE IS WITH REGARD TO
21 UPCOMING DEPOSITIONS. AND THAT'S WHY I THINK THAT WE DO NEED
22 TO HAVE A PROPOSAL THAT ADDRESSES NOT JUST PERFECT 10 BUT
23 AMAZON AND GOOGLE AS WELL BECAUSE AT RECENT DEPOSITIONS WE'VE
24 HAD PROBLEMS. AND THERE'S ANOTHER DEPOSITION THAT'S NOTICED
25 OF A --

1 THE COURT: WELL, LET ME ASK YOU, WHAT IS YOUR TAKE
2 ON THE MAJOR PROBLEM WITH THEIR PRODUCTION?

3 MS. KINCAID: OKAY.

4 DR. ZADA: MY TAKE?

5 THE COURT: NO.

6 MS. KINCAID: I THINK HE'S SPEAKING TO ME.

7 THE COURT: YES.

8 MS. KINCAID: HERE'S THE PROBLEM, YOUR HONOR. I'LL
9 TRY TO QUICKLY ADDRESS IT WITH REGARD TO DEPOSITIONS. JUST
10 TAKING ONE, THERE IS A THIRD-PARTY WITNESS TORE KESICKI --
11 ACTUALLY, IT WAS ONLINE CREATIONS, BUT HE WAS THE PERSON MOST
12 KNOWLEDGEABLE, TORE KESICKI. THE EXHIBITS WERE 255 PAGES.
13 YOU KNOW, SOME WERE EXHIBIT TABS SO IT PROBABLY ENDED UP
14 BEING MORE LIKE 235 PAGES BUT CERTAINLY IN EXCESS OF 200
15 PAGES OF EXHIBITS.

16 MANY OF THE PAGES OF EXHIBITS WERE NEVER PRODUCED
17 BY GOOGLE, COULD HAVE BEEN PRODUCED BY GOOGLE BUT NEVER
18 PRODUCED BEFORE DOCUMENTS BY GOOGLE. SO, NOT ONLY WERE THEY
19 NOT BATES NUMBERED, WHICH IS WHAT THEY SEEM TO BE STUCK ON
20 THAT BATES NUMBERING SOLVES ALL PROBLEMS, BUT IN ADDITION
21 THEY HAD NEVER BEEN PRODUCED BEFORE. WELL, OF COURSE THEY'D
22 SAY THEY CAN'T BE BATES NUMBERED BECAUSE THEY WEREN'T
23 PRODUCED. BUT THAT'S REALLY KIND OF SILLY. THERE WAS NO
24 REASON THAT THOSE DOCUMENTS COULDN'T HAVE BEEN PRODUCED
25 EARLIER. AND THEY WEREN'T.

1 IN ADDITION, THEY USED DOCUMENTS FROM PERFECT 10'S
2 PRODUCTION. THEY KNOW HOW TO DO THE FILE PATH, AND THEY
3 DIDN'T DO FILE PATHS FOR IT. WHEN THERE HAVE BEEN RECENT
4 DEPOSITIONS, AND WE'VE USED DOCUMENTS FROM OUR PRODUCTIONS,
5 EVEN THOUGH THERE'S NO COURT ORDER IN PLACE, WE'VE BEEN
6 GIVING THE FILE PATH NUMBERS.

7 AND WHEN I ASKED AT THE VERY LAST DEPOSITION OF --
8 I THINK IT WAS SHEENA CHOU, THEY TOOK OUT A PERFECT 10
9 DOCUMENT, DIDN'T EVEN SAY IT WAS A PERFECT 10 DOCUMENT. I
10 ASKED WHAT IT WAS. THEY SAID IT'S A PERFECT 10 DOCUMENT.
11 WILL YOU GIVE THE FILE PATH. AND THEY SAID, NO, WE WON'T DO
12 IT.

13 SO, WE HAVE A SITUATION WHERE WHAT'S GOOD FOR US
14 ISN'T GOOD FOR THEM EVEN THOUGH IT'S MUCH SIMPLER FOR THEM.
15 THEY HAVE THESE SMALL PRODUCTIONS BECAUSE THEY DON'T WANT TO
16 PRODUCE THEIR DOCUMENTS. AND, WAIT, THEY'RE BATES NUMBERED,
17 BUT, YOU KNOW, THEY DON'T WANT TO SAY, WHICH WOULD BE A SUPER
18 SIMPLE TASK, WHICH OF THESE DOCUMENTS KEYS UP TO DIFFERENT
19 DOCUMENT REQUESTS.

20 THEY THINK IT'S OKAY FOR PERFECT 10 TO TAKE 5
21 MILLION DOCUMENTS AND TAKE HUNDREDS OF REQUESTS, AND FOR EACH
22 REQUEST THEY OKAY THIS DOCUMENT HERE, THIS DOCUMENT HERE,
23 THIS DOCUMENT HERE, BUT THEY DON'T WANT TO DO IT FOR A
24 HUNDRED PAGES OF DOCUMENTS. I MEAN, THAT'S INCREDIBLE.

25 THAT'S WHY THE PROPOSALS EVEN IF IT'S MUTUAL AND IT

1 APPLIES TO BOTH SIDES IT STILL WON'T BE FAIR. THE BURDEN ON
2 PERFECT 10 IS GOING TO BE -- I CAN ONLY THINK OF THE WORD
3 "INSURMOUNTABLE." THAT'S WHY UNDER THE FEDERAL RULES YOU
4 CAN EITHER PRODUCE THINGS AS THEY'RE KEPT IN THE COURSE OF
5 BUSINESS, OR YOU CAN MATCH IT UP.

6 AND HERE THEY'RE SAYING YOU HAVE TO MATCH IT UP,
7 AND WE'RE ARGUING, WELL, WAIT, IT'S IN THE COURSE OF
8 BUSINESS.

9 THAT'S WHY, YOUR HONOR, I THINK IT WOULD BE VERY
10 FAIR IF WE COULD SUBMIT PAPERWORK TO YOU, EXPLAIN TO YOU
11 WHY WE BELIEVE THAT IT'S AS THINGS ARE KEPT IN THE COURSE
12 OF BUSINESS, AND MAKE A PROPOSAL THAT APPLIES TO ALL
13 SIDES.

14 THERE IS A DISCOVERY ISSUE THAT CAME UP A COUPLE OF
15 MONTHS AGO. AND WE SPECIFICALLY SAID, CAN YOU PLEASE TELL US
16 WHICH OF THE DOCUMENTS THAT YOU'VE PRODUCED COVER THESE
17 DIFFERENT INTERROGATORIES. BECAUSE THEY'RE SAYING, WELL, WE
18 PRODUCED RESPONSIVE DOCUMENTS. WE DON'T HAVE TO ANSWER THESE
19 INTERROGATORIES, WHICH YOU CAN DO UNDER THE FEDERAL RULES.
20 OKAY. WHICH DOCUMENTS ARE THEY? THEY SAID, YOU KNOW, WE'RE
21 NOT GOING TO TELL YOU. THAT'S TOO BURDENSOME, AND WE'RE NOT
22 GOING TO GO DOWN THAT ROAD.

23 SO, I THINK THE ONLY WAY THAT YOU'LL GET ANY
24 SEMBLANCE OF FAIR PROPOSALS IS WHEN IT APPLIES TO EVERYONE.

25 THAT'S WHY WITH THE FILE PATH WE SAID, WELL, LET IT

1 APPLY TO EVERYONE. BECAUSE WHEN IT JUST APPLIES TO ONE SIDE,
2 PEOPLE AREN'T SO FAIR ABOUT THE PROPOSALS THAT THEY COME UP
3 WITH.

4 MS. KASSABIAN: YOUR HONOR, THIS IS MS. KASSABIAN.
5 IF I COULD JUST RESPOND.

6 I BELIEVE YOU JUST ASKED MS. KINCAID TO IDENTIFY
7 WHAT PROBLEMS SHE HAS WITH GOOGLE'S PRODUCTION. SHE DIDN'T
8 GIVE YOU A SINGLE EXAMPLE FROM GOOGLE'S PRODUCTION. SHE
9 POINTED TO GOOGLE USING PERFECT 10 DOCUMENTS AND SHE NOT
10 BEING ABLE TO TELL THAT THEY WERE PERFECT 10 DOCUMENTS
11 BECAUSE, OF COURSE, PERFECT 10 DIDN'T BATES STAMP THEM. SO,
12 WE'RE JUST COMING BACK FULL CIRCLE HERE.

13 DR. ZADA: THE ANSWER IS --

14 MS. KINCAID: YOUR HONOR, I -- YOUR HONOR --

15 MR. MAUSNER: WAIT A MINUTE. LET'S LET JUDGE
16 HILLMAN SAY WHAT HE NEEDS TO SAY.

17 THE COURT: I ABSOLUTELY HAVE NOTHING TO SAY.

18 MR. MAUSNER: OKAY.

19 THE COURT: LET ME HEAR FROM MS. KASSABIAN A LITTLE
20 MORE.

21 MS. KASSABIAN: SO, ABOUT ONLINE CREATIONS, YOUR
22 HONOR, I TOOK THAT DEPOSITION IN NEW YORK. I BELIEVE IT WAS
23 IN AUGUST OR SEPTEMBER. PERFECT 10'S COUNSEL REPRESENTED
24 ONLINE CREATIONS. WE SERVED THE SUBPOENA ASKING FOR
25 RESPONSIVE DOCUMENTS. WE GOT VERY LITTLE DOCUMENT PRODUCTION

1 FROM ONLINE CREATIONS' COUNSEL, WHICH WAS THE LAW OFFICES OF
2 JEFF MAUSNER.

3 SO, WE WENT OUT ON TO ONLINE CREATIONS' WEB SITE TO
4 TRY TO LOOK FOR DOCUMENTS THAT HAD TO DO WITH ONLINE
5 CREATIONS. WE PRINTED A FEW DOCUMENTS OUT FROM THEIR PUBLIC
6 WEB SITE AND ASKED QUESTIONS ABOUT THEM.

7 THOSE COMPONENTS OF THE ONLINE CREATIONS' WEB SITE
8 SHOULD HAVE BEEN PRODUCED BY ONLINE CREATIONS VIA THEIR
9 COUNSEL, THE LAW OFFICES OF JEFF MAUSNER, BUT THEY WERE NOT.

10 AGAIN, GOOGLE HAS NEVER USED ANY GOOGLE-PRODUCED
11 DOCUMENTS THAT WERE NOT CONTROL NUMBERED HERE. SO, WHAT'S
12 HAPPENING IS PERFECT 10 IS TRYING TO MISH-MASH TEN DIFFERENT
13 ISSUES TOGETHER TO TRY TO GET YOUR ORDER TO NOT ISSUE A
14 RULING.

15 AND WE NEED A RULING, YOUR HONOR. WE NEED SOME
16 CONTROL OVER PERFECT 10'S PRODUCTION. WE'RE HAPPY TO SUBMIT
17 A PROPOSED ORDER AS YOU SUGGEST BY THE END OF THE WEEK WITH
18 OUR PROPOSAL AS TO HOW PERFECT 10 NEEDS TO IDENTIFY THINGS IN
19 ITS PRODUCTION.

20 MS. KINCAID: YOUR HONOR, IF I MAY JUST RESPOND
21 QUICKLY. FIRST OF ALL, I DID IDENTIFY A PROBLEM WITH
22 GOOGLE'S PRODUCTION. THEY SHOULD HAVE PRODUCED THOSE
23 DOCUMENTS, AND THEY DIDN'T.

24 THE DOCUMENTS THAT THEY'RE SAYING THAT THEY WENT ON
25 THE INTERNET AND GOT, FIRST OF ALL, THEY DIDN'T ASK FOR THEM

1 IN THEIR SUBPOENA. AND IN PART THEY DIDN'T ASK FOR THEM
2 BECAUSE THEY WANTED SOME, QUOTE, ELEMENT OF SURPRISE IN USING
3 THEM. THAT WAS CRYSTAL CLEAR.

4 AND IT'S NOT CONCEIVABLE FOR A SECOND THAT WHEN
5 THEY CAME UP WITH THEM WAS SHORTLY BEFORE HIS DEPOSITION.
6 THEY WANTED AN ELEMENT OF SURPRISE. THEY DIDN'T PRODUCE THE
7 DOCUMENTS UNDER THE FEDERAL RULES. THERE'S NO QUESTION THAT
8 UNDER RULE 26 THOSE DOCUMENTS SHOULD HAVE BEEN PRODUCED, AND
9 THEY WERE NEVER PRODUCED. AND THERE WERE HUNDREDS OF PAGES
10 OF DOCUMENTS LIKE THAT.

11 SECOND, I NEVER SAID I DIDN'T RECOGNIZE OUR OWN
12 PRODUCTION. IT WAS CLEAR THAT THERE WAS A DOCUMENT FROM THE
13 PERFECT 10 PRODUCTION USED FOR THE RECENT DEPOSITION.
14 HOWEVER, THEY REFUSED TO GIVE THE FILE PATH NUMBER FOR IT.

15 THAT'S THEIR POSITION. IT'S GOOD FOR PERFECT 10.
16 IT'S NOT GOOD FOR US. WE'LL GO TO TRIAL. LET THEM GIVE THE
17 FILE PATHS. WE'RE NOT GIVING FILE PATHS.

18 LET'S PENALIZE THEM FOR PRODUCING A LARGE VOLUME OF
19 DOCUMENTS WHILE WE PRODUCE A SMALL AMOUNT OF DOCUMENTS. AND
20 NOT ONLY DO WE PRODUCE A SMALL AMOUNT OF DOCUMENTS, BUT WE
21 DON'T WANT TO TELL YOU HOW THEY'RE RESPONSIVE TO VARIOUS
22 DOCUMENT REQUESTS.

23 AND THE REASON THEY DON'T WANT TO DO IT IS THEY
24 DON'T THINK IT'S REQUIRED BY THE FEDERAL RULES.

25 IT'S NOT REQUIRED BY THE FEDERAL RULES FOR THEM,

1 BUT IT'S SOMEHOW REQUIRED BY THE FEDERAL RULES FOR PERFECT
2 10. THAT SIMPLY ISN'T THE CASE.

3 ALL I'M ASKING FOR, YOUR HONOR, IS THAT WE AT LEAST
4 BE ABLE TO ARGUE TO YOU WHY THESE PROPOSALS HAVE TO APPLY TO
5 BOTH SIDES. THEY SHOW UP TO DEPOSITIONS. THEY USE DOCUMENTS
6 THAT THEY SHOULD HAVE PRODUCED. THEY DIDN'T PRODUCE.
7 THEREFORE, THEY'RE NOT BATES STAMPED.

8 AND THEY ALSO USE PERFECT 10 DOCUMENTS. AND THEY
9 DON'T WANT TO GIVE ANY FILE PATH INFORMATION. THEY'RE NOT
10 SAYING THEY CAN'T DO IT, THAT THEY CAN'T FIGURE IT OUT. THEY
11 SIMPLY DON'T WANT TO DO IT.

12 THEY WANT THE BURDEN TO BE ON PERFECT 10, ONLY ON
13 PERFECT 10, EVEN THOUGH PERFECT 10 HAS DONE A HUGE PRODUCTION
14 OF DOCUMENTS, AND THEY'VE DONE A VERY SMALL PRODUCTION OF
15 DOCUMENTS.

16 MR. MAUSNER: OKAY. LET'S MOVE ON. I THINK WE'VE
17 --

18 THE COURT: ALL RIGHT. LET'S FOR NOW -- I'M GOING
19 -- I'M NOT GOING TO ORDER ANYTHING ELSE TODAY. I'M GOING TO
20 ORDER WHAT I SAID REGARDING THE RECENT DOCUMENT PRODUCTION,
21 THE TWO PROPOSED ORDERS BY THE END OF THE WEEK.

22 IS THERE AN AGREEMENT THAT THE HERSH DEPOSITION
23 WILL BE MOVED?

24 MR. MAUSNER: -- OKAY WITH PERFECT 10.

25 THE COURT: WELL, THE OTHER THING I --

1 MR. JANSEN: -- TO THAT.

2 THE COURT: -- WANT TO ORDER TODAY IS THAT HOW MANY
3 DOCUMENTS WILL HERSH INDICATE HE'S RELYING ON FOR HIS
4 DEPOSITION?

5 DR. ZADA: IT'S OVER 2,000.

6 MR. MAUSNER: YES. I'M NOT -- IT'S OVER 2,000, BUT
7 I CAN'T GIVE --

8 THE COURT: THESE ARE ALL HARD-COPY DOCUMENTS,
9 RIGHT?

10 MR. MAUSNER: WELL, IF THEY'RE HARD COPY, THEY WILL
11 BE SCANNED AND ELECTRONICALLY SENT TO THEM.

12 THE COURT: ALL RIGHT. SO, THEY WILL BE STAMPED
13 YOU SAID, RIGHT?

14 MR. MAUSNER: YES.

15 THE COURT: OKAY.

16 MR. MAUSNER: IT WILL BE ON A DISK.

17 MS. KASSABIAN: WILL IT BE -- I'M SORRY. DID YOUR
18 HONOR ASK IF IT WAS GOING TO BE BATES STAMPED?

19 THE COURT: YES.

20 DR. ZADA: WELL, I THINK --

21 MR. MAUSNER: LET ME ANSWER THIS. LET ME ANSWER
22 THIS.

23 IF WE CAN PUT THEM INTO ONE OR TWO OR MAYBE THREE
24 ADOBE FILES, AND IF ADOBE CAN BATES STAMP THEM, YOU KNOW, THE
25 WAY THAT RACHEL DESCRIBED FOR AN ADOBE FILE, THEN, WE WILL

1 BATES STAMP THEM.

2 THE COURT: WELL, IF NOT, YOU'LL PRINT OUT HARD
3 COPIES AND YOU'LL ADD 2000 BATES STAMPS.

4 MR. MAUSNER: YOU MEAN PHYSICALLY?

5 THE COURT: YES. BIG DEAL.

6 MR. MAUSNER: OKAY. ALL RIGHT. WE WILL BATES
7 STAMP.

8 THE COURT: ALL RIGHT.

9 MR. MAUSNER: WE'RE WILLING TO DO IT, AND WE DID
10 IT, YOU KNOW, IN THE CASE OF SHEENA CHOU'S DEPOSITION --
11 DOCUMENTS THAT WE PRODUCED BECAUSE IT COULD BE DONE
12 INEXPENSIVELY AND EASILY.

13 THE ONLY -- WE CAN'T DO IT ON THE ONES THAT ARE,
14 YOU KNOW --

15 THE COURT: ALL RIGHT. WE'RE NOT ANSWERING THAT
16 TODAY.

17 ALL RIGHT. SO, I'VE ORDERED TWO THINGS. I'VE
18 ORDERED TWO PROPOSED ORDERS AS TO THE RECENT DOCUMENT
19 PRODUCTION. I'VE ORDERED -- I MADE AN ORDER AS TO THE
20 DOCUMENTS HERSH WILL RELY ON IN HIS DEPOSITION.

21 IS THERE -- I DIDN'T HEAR FROM GOOGLE OR AMAZON
22 ABOUT THE HERSH DEPOSITION, BUT IS THERE AN AGREEMENT TO PUT
23 IT OVER SOME PERIOD OF TIME?

24 MR. JANSEN: YES, YOUR HONOR. THIS IS MARK JANSEN.
25 WE NOTICED THE DEPOSITION, AND WE'RE CERTAINLY WILLING TO PUT

1 IT OVER AT LEAST UNTIL -- AT LEAST A MONTH, UNTIL THE MIDDLE
2 OF DECEMBER.

3 THE COURT: OKAY.

4 MR. JANSEN: YOU KNOW, DECEMBER 19TH OR 20TH.

5 THE COURT: WELL --

6 MR. ZELLER: AND THIS MIKE ZELLER FOR GOOGLE. I
7 APOLOGIZE. I MAY HAVE BEEN CUT OFF EARLIER, AND YOU COULDN'T
8 HEAR ME. WE'RE AMENABLE --

9 THE COURT: OKAY.

10 MR. ZELLER: -- TO TAKING THE DEPOSITION OFF. WE
11 PRESUME, HOWEVER, THAT MR. HERSH IS GENERALLY AVAILABLE A
12 MONTH FROM NOW?

13 THE COURT: WELL, I DON'T WANT ANY CHRISTMAS --

14 MR. MAUSNER: I DON'T KNOW ON THOSE DATES, BUT I
15 ASSUME THAT THERE WILL BE SOME DAYS THAT HE IS AVAILABLE IN
16 MID TO LATE DECEMBER.

17 MR. ZELLER: WE'RE FINE WITH THAT.

18 THE COURT: ALL RIGHT. AND, THEN, RATHER THAN MY
19 GETTING OR WAITING FOR ANOTHER EX PARTE AS TO PERFECT 10'S
20 GRIPES WITH AMAZON DOCUMENT PRODUCTION, I THINK WHAT I WOULD
21 LIKE TO DO THERE IS -- I KNOW THIS IS RIDICULOUS, BUT I'D
22 LIKE YOU -- I'D LIKE MS. KINCAID, ACTUALLY, AND MS. KASSABIAN
23 OR -- I GUESS MS. KASSABIAN TO EXHAUST THAT ISSUE.

24 AND, THEN, I THINK WE BETTER HAVE YOU COME BACK TO
25 COURT. AND I'LL NEED SOME MAYBE LIKE VISUAL AIDS TO GUIDE ME

1 THROUGH THE ISSUE AND SPEND A COUPLE OF HOURS ON THAT AND DO
2 IT WITHOUT ANY PAPERWORK IN ADVANCE. BUT I CAN'T SAY I
3 UNDERSTAND ALL THE ISSUES THERE.

4 MS. KASSABIAN: YOUR HONOR, I'M NOT SURE WHAT
5 YOU'RE TALKING ABOUT. JUST TO MAKE SURE I UNDERSTAND. I
6 THOUGHT YOU SAID REGARDING PERFECT 10'S GRIPES WITH AMAZON'S
7 PRODUCTION?

8 DID YOU MEAN --

9 THE COURT: YES.

10 MS. KASSABIAN: OKAY. SO, THAT WOULDN'T BE ME
11 THEN. YOU MEAN YOU WANT --

12 THE COURT: NOT AMAZON. I MEANT GOOGLE'S
13 PRODUCTION.

14 MS. KASSABIAN: OH, OKAY.

15 THE COURT: YES.

16 MS. KASSABIAN: SO, YOU MEAN THE DOCUMENTS THAT --
17 THE ISSUES THAT MS. KINCAID AND --

18 THE COURT: RIGHT, RIGHT, RIGHT. I'D LIKE YOU TO
19 SEE IF THE TWO OF YOU ALONE CAN REACH SOMETHING BETTER THAN
20 WHAT --

21 MS. KASSABIAN: ABSOLUTELY. IF THEY HAVE ISSUES
22 THEY'D LIKE TO SUBMIT -- TO SEND US AN EMAIL ABOUT, WE'RE
23 HAPPY TO MEET AND CONFER.

24 THE COURT: WELL, MAYBE IT COULD BE DONE OVER THE
25 PHONE. BUT IF YOU REACH AN IMPASSE THERE, WHICH IS HIGHLY

1 LIKELY, I'D RATHER -- I THINK WE'LL JUST CONVENE SOMETHING
2 HERE IN COURT.

3 MS. KASSABIAN: ABSOLUTELY.

4 THE COURT: ALL RIGHT.

5 MR. MAUSNER: YOUR HONOR, MAY I RAISE ONE OTHER
6 THING?

7 THE COURT: YES.

8 MR. MAUSNER: WE MAY NOT BE ABLE TO DISCUSS IT
9 TODAY, BUT IT'S SOMETHING THAT'S -- YOU KNOW, IT MAKES IT
10 VERY DIFFICULT FOR US TO OPERATE. UNDER THE PROTECTIVE
11 ORDER THERE'S CERTAIN ISSUES THAT IT'S NOT CLEAR WHO CAN SEE
12 WHAT.

13 THE FIRST ONE INVOLVES SEAN CHUMURA. AND YOU HAD
14 ISSUED AN ORDER OCTOBER 20, 2008. AMAZON HAD FILED A
15 PROTECTIVE ORDER SO THAT YOU COULD NOT SEE CONFIDENTIAL OR
16 HIGHLY CONFIDENTIAL MATERIALS. YOUR HONOR DENIED THAT. AND
17 THE ORDER WAS ISSUED IN THE GOOGLE CASE.

18 SO, WE WOULD JUST LIKE TO HAVE CLARIFICATION THAT
19 MR. CHUMURA CAN SEE CONFIDENTIAL AND HIGHLY CONFIDENTIAL
20 DOCUMENTS IN BOTH CASES.

21 THE COURT: I FORGET WHO HE IS.

22 MR. JANSEN: YOU KNOW, JEFF -- THIS IS MARK JANSEN,
23 YOUR HONOR. I JUST GOT AN EMAIL FROM JEFF ABOUT THAT ISSUE
24 LIKE FRIDAY. AND HE AND I HAVE GOT A SCHEDULED MEET AND
25 CONFER ON A NUMBER OF DISCOVERY ISSUES. I DON'T SEE A

1 PROBLEM IN PARTICULAR OF WHAT HE'S SUGGESTING. BUT IT SEEMS
2 TO ME IT'S JUST A COMPLETE WASTE OF THE COURT'S TIME TO JUST
3 RAISE ISSUES KIND OF AD HOC.

4 I GOT A LONG LIST OF DISCOVERY ISSUES. I SENT
5 SEVERAL LETTERS TO MR. MAUSNER ABOUT ISSUES. AND I THINK
6 WE'RE GOING TO HAVE A PHONE CALL TOMORROW AND HOPEFULLY
7 RESOLVE SOME OF THOSE. AND I EXPECT WE'LL RESOLVE THIS
8 PROTECTIVE ORDER ISSUE.

9 THE COURT: WELL, THAT'S FINE. IT DOES SEEM TO
10 MAKE SENSE. THOUGH I FORGET WHO MR. CHUMURA WAS.

11 MR. MAUSNER: OKAY. YOU KNOW, WE ALSO HAVE
12 QUESTIONS ABOUT MELANIE POBLETE. THERE'S AN INCONSISTENCY
13 BETWEEN WHAT SHE CAN SEE IN GOOGLE AND IN THE AMAZON CASE.
14 SO, WE'D LIKE THE -- WE'D LIKE TO GET THESE WORKED OUT
15 BECAUSE -- YOU KNOW, I NEED MY STAFF TO BE ABLE TO WORK ON
16 STUFF.

17 AND AT THIS POINT -- LIKE FOR MS. POBLETE IN THE
18 AMAZON CASE SHE CAN'T WORK ON HIGHLY CONFIDENTIAL MATERIALS
19 AT HOME. AND THE REASON FOR THAT WAS BACK AWHILE AGO SHE
20 HAD AN OFFICE AT PERFECT 10. NOW SHE ONLY HAS AN OFFICE IN
21 MY OFFICE. SO, THERE'S NO REASON FOR HAVING SUCH A
22 RESTRICTION.

23 SO, I'D LIKE THEM TO AGREE --

24 THE COURT: SOUNDS REASONABLE.

25 MR. MAUSNER: YES.

1 THE COURT: ALL RIGHT.

2 MR. MAUSNER: -- THAT THERE'S NO PROBLEM WITH THAT.

3 AND, MARK, IS THAT AGREEABLE TO YOU?

4 MR. JANSEN: I'D BE HAPPY TO DISCUSS WITH YOU
5 TOMORROW OVER THE PHONE EVERYTHING ELSE. RIGHT NOW I DON'T
6 KNOW WHY WE'RE GETTING INTO EVERY SINGLE DISCOVERY ISSUE
7 WE'VE GOT. BUT I HAVEN'T GOT ANY GENERAL CONCERN. I JUST
8 HAVEN'T THOUGHT ABOUT IT. I GOT AN EMAIL FROM YOU ON FRIDAY.
9 AND I DON'T -- I HAVEN'T THOUGHT THROUGH THE ISSUES AT ALL,
10 SO.

11 MR. MAUSNER: OKAY. WELL, YOU'LL DISCUSS THAT
12 TOMORROW WITH ME.

13 THE COURT: OKAY.

14 MR. JANSEN: YES. I'M HAPPY TO DISCUSS EVERY ISSUE
15 YOU'VE GOT THAT WE NEED TO DISCUSS. AND THAT'S WHY I'M --

16 MR. MAUSNER: THAT'S WHY I WANT TO MAKE SURE THAT
17 --

18 MR. JANSEN: YOUR HONOR, I'VE BEEN TRYING TO TALK
19 WITH MR. MAUSNER FOR THE LAST FOUR WEEKS TO DISCUSS DISCOVERY
20 THINGS INCLUDING THE SAMPLING THAT MEGA -- THE SO-CALLED MEGA
21 INTERROGATORY ISSUE. HE'S IGNORED EVERY LETTER I'VE SENT
22 ASKING FOR A MEETING.

23 MR. MAUSNER: THAT'S NOT TRUE. I TOLD YOU WHAT I'M
24 WORKING ON AT THE TIME.

25 THE COURT: ALL RIGHT. I'M GOING TO -- THANK YOU

1 --

2 MR. MAUSNER: OKAY. THANK YOU, YOUR HONOR.

3 MR. JANSEN: THANK YOU, YOUR HONOR.

4 MR. ZELLER: THANK YOU.

5 THE COURT: BYE.

6 (PROCEEDINGS CONCLUDED 11:10 A.M.)

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C E R T I F I C A T E

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

DOROTHY BABYKIN

12/4/09

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN