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16 Attorneys for Defendant GOOGLE INC.

17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA

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

21 *Plaintiff,*

22 vs.

23 GOOGLE INC., a corporation; and  
24 DOES 1 through 100, inclusive,

25 *Defendants.*

26 AND COUNTERCLAIM

27 PERFECT 10, INC., a California  
28 corporation,

*Plaintiff,*

vs.

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

*Defendants.*

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

**DISCOVERY MATTER**

**DECLARATION OF RACHEL  
HERRICK KASSABIAN  
REGARDING PERFECT 10, INC.'S  
NON-COOPERATION  
CONCERNING GOOGLE INC.'S  
MOTION FOR A DOCUMENT  
PRESERVATION ORDER TO  
PREVENT FURTHER  
SPOILIATION OF EVIDENCE BY  
PERFECT 10, INC.**

**(SUBMITTED PURSUANT TO  
LOCAL RULE 37-2.4)**

Hon. Stephen J. Hillman

Date: January 11, 2010

Time: 2:00 p.m.

Ctrm: 550

Discovery Cut-off: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

1 I, Rachel Herrick Kassabian, declare as follows:

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

7 2. I submit this Declaration pursuant to Local Rule ("L.R.") 37-2.4 due to  
8 Perfect 10's failure to cooperate in the preparation of a Joint Stipulation on Google's  
9 Motion for a Document Preservation Order to Prevent Further Spoliation of  
10 Evidence by Perfect 10 ("Joint Stipulation"), as required by L.R. 37-2.2.

11 3. Google met and conferred with Perfect 10 regarding the issues raised  
12 by Google's Motion for a Document Preservation Order on various dates beginning  
13 on August 25, 2009, and concluding on December 2, 2009. Unfortunately, the  
14 parties were unable to resolve these discovery issues, forcing Google to resort to  
15 motion practice.

16 4. After the close of business on December 2, 2009 and before the start of  
17 business on December 3, 2009, my colleague Brad Love sent Perfect 10's counsel  
18 Jeff Mausner an email attaching Google's portions of the Joint Stipulation, together  
19 with Google's supporting declaration and exhibits.


20 5. On December 10, 2009 at 11:40 p.m., Mr. Mausner emailed me a  
21 document that included (1) Perfect 10's arguments in opposition to Google's motion,  
22 as well as (2) a motion by Perfect 10, seeking a document preservation order against  
23 Google. Also attached to Mr. Mausner's emails were various declarations and  
24 evidence claiming to support the aforementioned arguments.

25 6. On the morning of December 11, 2009, I sent Mr. Mausner an email  
26 objecting to Perfect 10's inclusion of an entirely separate motion in Perfect 10's  
27 portions of the Joint Stipulation on Google's motion. I explained that Perfect 10's  
28 inclusion of this separate motion in its portions of the Joint Stipulation violates L.R.

1 37-2.1 and L.R. 37-2.2 since, among other reasons, including a new purported  
2 motion in Perfect 10's responsive portions of the Joint Stipulation deprives Google  
3 of the opportunity to substantively oppose it. I asked that Perfect 10 (1) remove the  
4 arguments and evidence supporting Perfect 10's new motion from the Joint  
5 Stipulation on Google's motion, and (2) deliver a corrected version of its portions of  
6 the Joint Stipulation (containing only Perfect 10's opposition to Google's motion) to  
7 me today.

8 7. As of the execution of this Declaration, Perfect 10 has not provided me  
9 with a corrected version of its portions of the Joint Stipulation.

10 I declare under penalty of perjury under the laws of the United States of  
11 America that the foregoing is true and correct. Executed December 11, 2009 at San  
12 Francisco, California.

13   
14 Rachel Herrick Kassabian