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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA

12 PERFECT 10, INC., a California corporation,

13 Plaintiff,

14 v.

15 GOOGLE INC., a corporation,

16 Defendants.

17 AND CONSOLIDATED CASE.

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

21 **Before Judge Stephen J. Hillman**

22 **DECLARATION OF JEFFREY N. MAUSNER IN SUPPORT OF PERFECT 10'S PORTION OF THE JOINT STIPULATION REGARDING GOOGLE'S MOTION FOR A DOCUMENT PRESERVATION ORDER, AND IN SUPPORT OF PERFECT 10'S MOTION FOR A DOCUMENT PRESERVATION ORDER**

23 *Exhibits A, B & D Filed Separately Under Seal Pursuant To Protective Order*

24 Date: January 11, 2010

25 Time: 2 P.M.

26 Place: Courtroom 550, Courtroom of the Honorable Stephen J. Hillman

27 Discovery Cut-Off Date: None Set

28 Pretrial Conference Date: None Set

Trial Date: None Set

Declaration of Jeffrey N. Mausner in Support of Perfect 10's Portions of the Joint Stipulation Re Google's Motion For A Document Preservation Order And In Support Of Perfect 10's Motion For A Document Preservation Order

**DECLARATION OF JEFFREY N. MAUSNER**

I, Jeffrey N. Mausner, declare as follows:

1. I am a member of the State Bar of California and admitted to practice before this Court. I am counsel of record for Plaintiff Perfect 10, Inc. (“Perfect 10”) in this action. All of the matters stated herein are of my own personal knowledge, except where otherwise stated, and if called as a witness, I could and would testify competently thereto.

2. Many of Ms. Augustine’s work related emails are attorney-client privileged or constitute work-product.

3. On October 21, 2009, defendants took the deposition of Sheena Chou. Submitted under seal as Exhibit A is a true and correct copy of portions from the transcript of that deposition. [Pages 18 – 46, 77 – 105.]

4. In connection with her deposition, Google served a document subpoena on Ms. Chou. She produced approximately 222 pages of emails in response to the document subpoena. Numerous emails were not produced based upon attorney-client privilege and/or work-product.

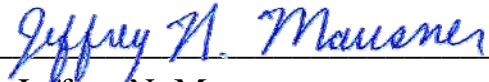
5. On November 29-30, 2009, Perfect 10 filed a Motion for Evidentiary and Other Sanctions Against Defendant Google Inc. and/or For the Appointment of A Special Master, based upon Google’s disobedience of discovery orders. A copy of Perfect 10’s Memorandum of Points and Authorities in Support of that motion is submitted under seal as Exhibit B.

6. Upon receiving Google’s Joint Stipulation, I asked Google to agree to a preservation order that would apply equally and mutually to both parties, but Google refused to do so. Perfect 10 concurrently notified Google that it would file a motion requesting the same relief Google has sought against Perfect 10, if Google would not so agree. (See email to Rachel Kassabian and other Google attorneys from me, dated December 3, 2009 and email to me from Rachel Kassabian, dated December 3, 2009, true and correct copies of which are attached

1 hereto as the first two pages of Exhibit C.) Almost one week later, Ms. Kassabian  
2 wrote to me and identified a few pages in Google's production (GGL 031706 –  
3 031708) that address Google's document retention policies. (Exhibit C, first  
4 page.) Filed separately under seal as Exhibit D are true and correct copies of  
5 pages GGL 031706 - 031708 from Google's document production.

6 I declare under penalty of perjury under the laws of the United States of  
7 America that the foregoing is true and correct to the best of my knowledge.

8 Executed on December 10, 2009, at Los Angeles County, California.

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12 Jeffrey N. Mausner  
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# Exhibit A

FILED SEPARATELY UNDER SEAL  
PURSUANT TO PROTECTIVE ORDER

# Exhibit B

FILED SEPARATELY UNDER SEAL  
PURSUANT TO PROTECTIVE ORDER

# Exhibit C

## Jeffrey Mausner

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**From:** Rachel Herrick Kassabian [rachelkassabian@quinnemanuel.com]  
**Sent:** Wednesday, December 09, 2009 12:29 PM  
**To:** Jeffrey Mausner  
**Cc:** Thomas Nolan; Valerie Kincaid; mtjansen@townsend.com; ajmalutta@townsend.com; Timothy Cahn; glcincone@townsend.com; Steiner, Elham F.; Michael T Zeller; Andrea P Roberts; Brad R. Love  
**Subject:** RE: Perfect 10, Inc. v. Google Inc.: Joint Stipulation on Google's Motion for a Document Preservation Order

Jeff,

To follow up on my prior email (and to discourage P10 from filing another motion without basis), I wanted to make sure you were aware that Google has already produced documents regarding its document preservation policies. **See GGL 031706-031708 (produced on May 1, 2008)**. If Perfect 10 has some basis for specific concerns regarding any particular document requests or document retention issues, please provide them pursuant to the meet and confer procedures outlined in Local Rule 37-1.

Regards,

**Rachel Herrick Kassabian | Partner**  
**Quinn Emanuel Urquhart Oliver & Hedges LLP**  
555 Twin Dolphin Drive, Suite 560  
Redwood Shores, CA 94065  
650.801.5005 Direct  
650.801.5000 Main  
650.801.5100 Fax  
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**From:** Rachel Herrick Kassabian  
**Sent:** Thursday, December 03, 2009 4:27 PM  
**To:** Jeffrey Mausner  
**Cc:** Thomas Nolan; Valerie Kincaid; mtjansen@townsend.com; ajmalutta@townsend.com; Timothy Cahn; glcincone@townsend.com; Steiner, Elham F.; Michael T Zeller; Andrea P Roberts; Charles K Verhoeven; Brad R. Love  
**Subject:** RE: Perfect 10, Inc. v. Google Inc.: Joint Stipulation on Google's Motion for a Document Preservation Order

Jeff,

Unlike Google, the deposition testimony of Perfect 10's employees has demonstrated that Perfect 10 failed to issue a litigation hold in connection with this action, and is actively destroying documents. Your suggestion that Perfect 10 is willing to stop destroying evidence only if Google enters into some sort of an agreement that is plainly unnecessary for Google is inappropriate. If Perfect 10 has specific concerns about Google's document preservation efforts, you are welcome to raise them through the meet and confer process. You have not done so. In any event, Google has taken all steps necessary to preserve evidence in this case, consistent with the law, and Perfect 10 has no basis for claiming otherwise.

Please provide Perfect 10's portions of the Joint Stipulation within five business days of receiving it. Since you received it before the start of business on December 3, that means Perfect 10's portions are due December 9. If you need an extra day (until December 10), we would be happy to extend P10's deadline as a professional courtesy.

Regards,

**Rachel Herrick Kassabian | Partner**  
**Quinn Emanuel Urquhart Oliver & Hedges LLP**

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

**Sent:** Thursday, December 03, 2009 1:48 PM

**To:** Brad R. Love

**Cc:** Rachel Herrick Kassabian; Thomas Nolan; Valerie Kincaid; [mtjansen@townsend.com](mailto:mtjansen@townsend.com); [ajmalutta@townsend.com](mailto:ajmalutta@townsend.com); Timothy Cahn; [glicincone@townsend.com](mailto:glicincone@townsend.com); Steiner, Elham F.; Michael T Zeller; Andrea P Roberts; Charles K Verhoeven

**Subject:** RE: Perfect 10, Inc. v. Google Inc.: Joint Stipulation on Google's Motion for a Document Preservation Order

Rachel,

Perfect 10 received Google's joint stipulation. Perfect 10 is amenable to agreeing upon a preservation order that would apply *mutually and equally* to Perfect 10 and Google.

Please let me know if you are interested by the close of business today. If Google does not want to agree to resolve this dispute as outlined above, then Perfect 10 will file a motion requesting the same relief Google has sought against Perfect 10. Perfect 10 will file the motion and seek the order based upon, *inter alia*, Google's refusal to respond to the questions in my September 8, 2009 letter (page 2), Google's failure to produce numerous documents (as set forth in Perfect 10's motion for evidentiary sanctions), and the case law Google cites in the joint stipulation.

Please call me if you wish to discuss any of this.

By the way, Brad Love



**Cc:** Rachel Herrick Kassabian; Thomas Nolan

**Subject:** Perfect 10, Inc. v. Google Inc.: Joint Stipulation on Google's Motion for a Document Preservation Order

Jeff,

Attached are Google's portions of the Joint Stipulation on Google Inc.'s Motion for a Document Preservation Order to Prevent Further Spoliation of Evidence by Perfect 10, Inc. Because of file size limitations, the supporting Declaration and Exhibits thereto will be attached to several emails to follow.

Pursuant to Local Rule 37-2.2, please send us Perfect 10's portions of the Joint Stipulation by December 9. Pursuant to Local Rule 37-2.2, you will then have one business day to sign the document and return it by hand.

Best Regards,

Brad Love  
Quinn Emanuel Urquhart Oliver & Hedges, LLP  
50 California Street, 22nd Floor  
San Francisco, CA 94111  
Direct: (415) 875-6330  
Main Phone: (415) 875-6600  
Main Fax: (415) 875-6700  
E-mail: [bradlove@quinnemanuel.com](mailto:bradlove@quinnemanuel.com)  
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# Exhibit D

FILED SEPARATELY UNDER SEAL  
PURSUANT TO PROTECTIVE ORDER