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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 GOOGLE INC., a corporation,

17 Defendants.

18 AND CONSOLIDATED CASE.

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

**Before Judge Stephen J. Hillman**

**DISCOVERY MATTER**

**DECLARATION OF JEFFREY N.  
 MAUSNER REGARDING GOOGLE,  
 INC.'S NON-COOPERATION  
 CONCERNING GOOGLE, INC.'S  
 MOTION FOR A DOCUMENT  
 PRESERVATION ORDER, AND  
 PERFECT 10'S MOTION FOR A  
 DOCUMENT PRESERVATION  
 ORDER**

[Submitted Pursuant To Local Rule 37-2.4]

Date: January 11, 2009

Time: 2 P.M.

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

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

28 Declaration Of Jeffrey N. Mausner Regarding Google's Non-Cooperation Concerning Google's Motion  
 For A Document Preservation Order, And Perfect 10's Motion For A Document Preservation Order



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

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

12 (*See* email from Jeffrey Mausner to Rachel Kassabian dated December 3, 2009,  
13 which is attached hereto as Exhibit A.)

14 Thus, Google was apprised of the specific relief that Perfect 10 would seek, and  
15 the basis for it – the mountain of evidence in Perfect 10's motion for sanctions that  
16 shows that Google has not produced documents ordered by both Judge Hillman  
17 and Judge Matz, and that Google has misrepresented that it did produce such  
18 documents. (Exhibit C to the Declaration of Jeffrey Mausner in Support of Perfect  
19 10's Position Regarding Document Preservation Order (Mausner Preservation  
20 Order Decl.)) Google would not agree to a mutual preservation order.

21 6. On December 10, 2009, I emailed Perfect 10's portions of the Joint  
22 Stipulation to Google's attorneys, along with Perfect 10's supporting declarations  
23 and exhibits.

24 7. On December 11, 2009, Google's counsel informed me that they  
25 would not include Perfect 10's portions of the Joint Stipulation unless Perfect 10  
26 revised its portions to omit material that referenced Perfect 10's motion for a  
27 document preservation order. Google complained that Perfect 10's inclusion of  
28 such references deprived it of the opportunity to file a response. In reply, I

1 informed Ms. Kassabian that “[i]f Google wants to add a response to the Joint  
2 Stipulation, it may do so.” Ms. Kassabian ignored this offer. I also informed Ms.  
3 Kassabian that the Local Rules required Google to include Perfect 10’s portions  
4 and then obtain my signature. I stated the following:

5           Google has no basis for refusing to follow the procedures in  
6           Local Rule 37. Perfect 10 fully cooperated and complied with those  
7           procedures in response to Google's delivery of the Joint Stipulation  
8           (despite Google's failure to comply with Local Rule 37), and in  
9           notifying Google about Perfect 10's own motion. Google is obligated  
10          to include Perfect 10's portions of the Joint Stipulation and obtain my  
11          signature. Google cannot unilaterally decide to not follow this  
12          procedure. Google may inform the Court that it believes that Perfect  
13          10 cannot bring its own motion, but it cannot refuse to follow the  
14          procedures and refuse to include Perfect 10's portions of the Joint  
15          Stipulation and obtain my signature. This is yet another example of  
16          Google's unfair gamesmanship, which is the subject of an order in this  
17          case. Further, your timing of this motion, and in particular the threats  
18          made in your email, are an obvious attempt to sidetrack me from  
19          working on the Reply brief that is due on Monday. I cannot spend  
20          any further time on this until after the Reply brief is filed.

21           If Google wants to add a response to the Joint Stipulation, it  
22          may do so. But in any case, Google cannot file its portion of the Joint  
23          Stipulation without Perfect 10’s portions included and my signature.  
24          Alternatively, I can discuss this with you after the Reply brief and  
25          supporting documents are filed.

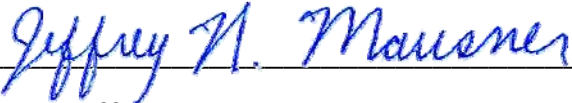
26          (See email from Jeffrey Mausner to Rachel Kassabian dated December 11, 2009,  
27          which is attached hereto as Exhibit B.)

28           8.       Nevertheless, on December 11, 2009, Google filed the Joint

1 Stipulation without Perfect 10's portions and incorrectly represented that Perfect  
2 10 refused to cooperate in the preparation of the Joint Stipulation.

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

5 Executed on December 15, 2009, at Los Angeles County, California.

6  
7   
8 Jeffrey N. Mausner

# Exhibit A

## Jeffrey Mausner

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**From:** Jeffrey Mausner [jeff@mausnerlaw.com]  
**Sent:** Thursday, December 03, 2009 1:48 PM  
**To:** 'Brad R. Love'  
**Cc:** 'Rachel Herrick Kassabian'; 'Thomas Nolan'; Valerie Kincaid (VKincaid@Mausnerlaw.com); Jansen, Mark T. mtjansen@townsend.com; Malutta, Anthony J. ajmalutta@townsend.com; Timothy Cahn (trcahn@townsend.com); Cincone, Gia L. glcincone@townsend.com; Steiner, Elham F.; Michael T Zeller michaelzeller@quinnemanuel.com; Andrea P Roberts andreaproberts@quinnemanuel.com; Charles K. Verhoeven (charlesverhoeven@quinnemanuel.com)  
**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's email below states that our portion of the Joint Stipulation is due by December 9. We did not receive Google's portions of the Joint Stipulation and supporting exhibits until December 3, so my calculation is that our portions are not due until December 10.

Jeff.

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**From:** Brad R. Love [mailto:bradlove@quinnemanuel.com]  
**Sent:** Thursday, December 03, 2009 12:00 AM  
**To:** Jeff Mausner  
**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 B

## Jeffrey Mausner

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**From:** Jeffrey Mausner [jeff@mausnerlaw.com]  
**Sent:** Friday, December 11, 2009 1:59 PM  
**To:** 'Rachel Herrick Kassabian'; 'Valerie Kincaid'  
**Cc:** 'Thomas Nolan'; 'Brad R. Love'; 'Michael T Zeller'  
**Subject:** RE: Joint Stipulation re Preservation Order - Email 2

Rachel, I cannot respond to your email in detail because of the deadline this Monday to file the Reply brief in support of Perfect 10's motion for evidentiary sanctions against Google. I am available after that to respond to your email in more detail and to discuss the issues Google raises.

Google has no basis for refusing to follow the procedures in Local Rule 37. Perfect 10 fully cooperated and complied with those procedures in response to Google's delivery of the Joint Stipulation (despite Google's failure to comply with Local Rule 37), and in notifying Google about Perfect 10's own motion. Google is obligated to include Perfect 10's portions of the Joint Stipulation and obtain my signature. Google cannot unilaterally decide to not follow this procedure. Google may inform the Court that it believes that Perfect 10 cannot bring its own motion, but it cannot refuse to follow the procedures and refuse to include Perfect 10's portions of the Joint Stipulation and obtain my signature. This is yet another example of Google's unfair gamesmanship, which is the subject of an order in this case. Further, your timing of this motion, and in particular the threats made in your email, are an obvious attempt to sidetrack me from working on the Reply brief that is due on Monday. I cannot spend any further time on this until after the Reply brief is filed.

If Google wants to add a response to the Joint Stipulation, it may do so. But in any case, Google cannot file its portion of the Joint Stipulation without Perfect 10's portions included and my signature. Alternatively, I can discuss this with you after the Reply brief and supporting documents are filed.

If Google files its motion without Perfect 10's portions and signature, Perfect 10 will bring this matter to the Court's attention and seek appropriate sanctions. Jeff

---

**From:** Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]  
**Sent:** Friday, December 11, 2009 10:52 AM  
**To:** 'Jeffrey Mausner'; 'Valerie Kincaid'  
**Cc:** Thomas Nolan; Brad R. Love; Michael T Zeller  
**Subject:** RE: Joint Stipulation re Preservation Order - Email 2

Jeff,

We have reviewed P10's portions of the joint stipulation on Google's motion for a document preservation order. Unfortunately, P10 has not just opposed Google's motion; it has also purported to include its own motion against Google for a document preservation order. As we have already made clear, P10 has failed to honor its meet-and-confer

obligations under Local Rule 37-1 for any such P10 motion. Nor does P10 have any basis whatsoever to claim that Google has failed to preserve any documents.

In any event, your inclusion of another motion (with purported evidence in support thereof) in this joint stipulation violates the Local Rules governing preparation and filing of joint stipulations (Local Rules 37-2.1 and 37-2.2). Among other things, P10's inclusion of a new motion against Google in this joint stipulation deprives Google of the opportunity to respond to it. Please remove the arguments and evidence constituting P10's motion from P10's portions of the joint stipulation on Google's motion (and from P10's supporting declarations), and return the corrected documents to us by 3pm today. Please make sure to include both an unredacted and a redacted version of P10's portion of the corrected joint stipulation and P10's corrected supporting documents (which your documents from last night did not do). If Perfect 10 does not send us its corrected portions of this joint stipulation (and corrected supporting declarations) by 3pm today, Google will file its portion of the joint stipulation and its supporting documents (without P10's portions), together with a Statement of Non-Cooperation pursuant to Local Rule 37-2.4. If P10 does send us its corrected portions of this joint stipulation and P10's supporting documents by 3pm today, but does not include redacted versions for public filing, we will assume that P10 wants the entirety of its portions of the corrected joint stipulation (as well as the entirety of its corrected supporting declarations) to be filed under seal, and we will redact the entirety of those materials for the public filed version.

If Perfect 10 wishes to file its own motion regarding document preservation issues, please (1) fulfill P10's meet and confer obligations first, and then (2) send us a joint stipulation thereon, which we will respond to within five days, per the local rules governing joint stipulations.

Regards,

Rachel

**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 10, 2009 11:39 PM

**To:** Brad R. Love; Thomas Nolan; Rachel Herrick Kassabian

**Subject:** Joint Stipulation re Preservation Order - Email 2

Attached is the Joint Stipulation in Word format. It now contains Perfect 10's portions. Also, Perfect 10 changed the caption page and the footer to reflect that Perfect 10 is also moving for a document preservation order. My declaration is also attached. The Augustine Declaration, Zada Declaration, and Mausner Under Seal Exhibits were sent in a previous email. Jeff

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