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 9 Attorneys for Defendant GOOGLE INC.

11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California  
 corporation,  
 14 *Plaintiff,*  
 15 vs.  
 16 GOOGLE INC., a corporation; and  
 17 DOES 1 through 100, inclusive,  
 18 *Defendants.*

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

**DISCOVERY MATTER**

Hon. Stephen J. Hillman

**DECLARATION OF RACHEL  
 HERRICK KASSABIAN IN  
 SUPPORT OF GOOGLE INC.'S  
 NOTICE RE: PERFECT 10, INC.'S  
 IMPROPERLY FILED JOINT  
 STIPULATION**

19 AND COUNTERCLAIM

20 PERFECT 10, INC., a California  
 corporation,  
 21 *Plaintiff,*  
 22 vs.  
 23 AMAZON.COM, INC., a corporation;  
 24 A9.COM, INC., a corporation; and  
 25 DOES 1 through 100, inclusive,  
 26 *Defendants.*

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

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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 in support of Google Inc.'s Notice re: Perfect  
8 10, Inc.'s Improperly Filed Joint Stipulation, filed concurrently.

9 3. On December 11, 2009, Google filed a Motion for a Document  
10 Preservation Order to Prevent Further Spoliation by Perfect 10 ("Google's  
11 Spoliation Motion"). Google had met and conferred with Perfect 10 regarding the  
12 issues raised by Google's Spoliation Motion on various dates beginning on August  
13 25, 2009, and concluding on December 2, 2009.

14 4. On December 10, 2009 at 11:40 p.m., Jeffrey Mausner (counsel of  
15 record for Perfect 10) emailed me a document that included (1) Perfect 10's  
16 arguments in opposition to Google's Spoliation Motion, intermingled with (2) a  
17 separate motion by Perfect 10 seeking a document preservation order against  
18 Google, about which Perfect 10 had not properly met and conferred ("December 10  
19 Joint Stipulation"). Also attached to Mr. Mausner's emails were various declarations  
20 and evidence claiming to support the aforementioned arguments.

21 5. On the morning of December 11, 2009, I sent Mr. Mausner an email  
22 objecting to Perfect 10's inclusion of an entirely separate motion in Perfect 10's  
23 portions of the Joint Stipulation on Google's Spoliation Motion, and explaining that  
24 Perfect 10's actions violated the Court's Local Rules. Because Perfect 10 refused to  
25 (1) remove the arguments and evidence supporting Perfect 10's new motion from the  
26 Joint Stipulation on Google's Spoliation Motion, and (2) deliver a corrected version  
27 of its portions of the Joint Stipulation (containing only Perfect 10's opposition to  
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1 Google's Spoliation Motion) to me, we were forced to file Google's Spoliation  
2 Motion along with a statement of non-cooperation.

3 6. On December 14, 2009 at 1:27 a.m., Mr. Mausner sent an email to this  
4 Court's clerk, Sandra Butler, requesting that Ms. Butler inform Magistrate Judge  
5 Hillman that on December 15, Perfect 10 would file "the Joint Stipulation that it  
6 emailed to Google on December 10." Again, that December 10 Joint Stipulation in  
7 fact included (1) Google's Spoliation Motion which Google had already filed on  
8 December 11, and (2) P10's opposition thereto, intermingled with (3) Perfect 10's  
9 new motion against Google (about which Perfect 10 had failed to meet and confer).

10 7. After reviewing Mr. Mausner's December 14 email to Ms. Butler, I  
11 sent him an email later that same day, again requesting that Perfect 10 meet and  
12 confer with Google before filing its planned motion. I specifically asked Mr.  
13 Mausner the following: "what documents does Perfect 10 believe have not been  
14 preserved, and what basis does Perfect 10 have for that belief?" I further reminded  
15 Mr. Mausner that if Perfect 10 wished to proceed with its motion, it must follow the  
16 Local Rules governing preparation of joint stipulations on discovery motions by  
17 giving Google five court days to provide its responsive portions of the Joint  
18 Stipulation. Finally, I informed Mr. Mausner that Perfect 10 did not have Google's  
19 permission to file Google's portions of the December 10 Joint Stipulation.

20 8. Nevertheless, on December 15, 2009, Perfect 10 went ahead and filed  
21 its motion for a document preservation order against Google, including the  
22 December 10 Joint Stipulation. The December 10 Joint Stipulation includes  
23 Google's counsel's name and address in the caption on the cover page, as though  
24 Google had participated in or consented to the filing of this document, which was  
25 not true. Perfect 10 included Google's arguments in this document against my  
26 express instructions, and without Google's authorization.

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9. The December 10 Joint Stipulation does not include Google's response to Perfect 10's motion. Perfect 10 did not give Google five court days to provide its response (as required by Local Rule 37-2.2) before filing Perfect 10's motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed December 16, 2009 at San Francisco, California.

*Rachel Herrick Kassabian*  
Rachel Herrick Kassabian