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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

Hon. Stephen J. Hillman

**REPLY DECLARATION OF
RACHEL HERRICK KASSABIAN
IN SUPPORT OF GOOGLE INC.'S
MOTION FOR A DOCUMENT
PRESERVATION ORDER TO
PREVENT FURTHER
SPOILIATION OF EVIDENCE BY
PERFECT 10, INC.**

Date: January 15, 2010

Time: 10:00 a.m.

Ctrm: 550

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

PUBLIC REDACTED

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 competently
6 thereto.

7 2. Attached hereto as Exhibit A is a true and correct copy of excerpts of the
8 transcript of the deposition of Nadine Schoenweitz, taken on October 16, 2009.

9 3. On October 27, 2009, shortly after Ms. Schoenweitz's deposition,
10 counsel for Google initiated meet and confer with Jeff Mausner (who is representing
11 both Perfect 10 and Ms. Schoenweitz) regarding [REDACTED]

12 [REDACTED]. A true and correct
13 copy of Google's October 27, 2009 letter is attached hereto as Exhibit B. Mr.
14 Mausner did not provide a substantive response to Google's meet and confer efforts
15 until nearly two months later, by letter dated December 22, 2009 (a true and correct
16 copy of which is attached hereto as Exhibit C), after Google already had filed the
17 present motion.

18 4. Attached hereto as Exhibit D is a true and correct copy of excerpts of the
19 transcript of the deposition of Amy Weber, taken on November 11, 2009.

20 5. Attached hereto as Exhibit E is a true and correct copy of excerpts of the
21 transcript of the deposition of Amber Smith, taken on November 19, 2009.

22 6. On October 6, 2009, this Court ordered Perfect 10 to produce certain
23 financial documents, including Perfect 10's missing monthly financial reports (to the
24 extent such documents exist). True and correct copies of excerpts of the Court's
25 October 6 Order (Docket No. 560) (ordering the production) and the corresponding
26 Joint Stipulation (Docket No. 408) (identifying the several dozen specific missing
27 monthly reports) are attached hereto as Exhibit F. However, Perfect 10 did not
28 produce any of those missing financial reports in response to the Court's Order.

1 Google met and conferred with Perfect 10 regarding these still-missing financial
2 reports on various dates beginning on November 4, 2009. True and correct copies of
3 that meet and confer correspondence are attached hereto as Exhibit G. As of the date
4 of this declaration, Perfect 10 has confirmed that none of these missing reports
5 currently exist, and that the missing reports from 2007 were never generated in the
6 first place. However, Perfect 10 has not confirmed whether the remaining missing
7 monthly financial reports (including for the years 2004, 2005, 2006, 2008 and 2009)
8 existed at one time and were destroyed, or were never generated in the first place.

9 7. At page 3 of Perfect 10's opposition brief (Docket No. 690, filed under
10 seal), Perfect 10 claims that after it had given Google notice that it had inadvertently
11 produced two allegedly privileged emails, Google ignored that notice and filed those
12 emails as an exhibit to Google's motion anyway (citing Exhibit N to my previous
13 declaration, Docket No. 686, filed under seal). This is incorrect. After receiving
14 Perfect 10's December 9, 2009 email regarding this allegedly inadvertent production
15 (a true and correct copy of which is attached hereto as Exhibit H), Google removed
16 the allegedly privileged content described in Perfect 10's December 9 email from that
17 exhibit by (1) removing the first email Perfect 10 claimed was completely privileged
18 and (2) redacting the allegedly privileged portion of the second email. This can be
19 seen by simply looking at Exhibit N to my previous declaration, which has a large
20 redacted portion [REDACTED]

21 [REDACTED] Google did not use or file any of the allegedly privileged material
22 Perfect 10 described in its December 9 email.

23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct. Executed January 6, 2010 at San
25 Francisco, California.

26 *Rachel Herrick Kassabian*
27 _____

28 Rachel Herrick Kassabian

EXHIBIT A

EXHIBIT A:
Filed Under Seal Pursuant to
Protective Order

EXHIBIT B

EXHIBIT B:
Filed Under Seal Pursuant to
Protective Order

EXHIBIT C

EXHIBIT C:
Filed Under Seal Pursuant to
Protective Order

EXHIBIT D

EXHIBIT D:
Filed Under Seal Pursuant to
Protective Order

EXHIBIT E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**Certified
Transcript**

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PERFECT 10, INC., a California)
corporation,)
Plaintiff,)
vs.)
GOOGLE, INC., a corporation; and)
DOES 1 through 100, inclusive,)
Defendants.)
_____)
AND COUNTERCLAIM,)
_____)
PERFECT 10, INC., a California)
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
CV 05-4753 AHM
(SHx)

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Job No. 223587

DEPOSITION OF AMBER SMITH
NOVEMBER 19, 2009

1 BY MR. DOYLE:

2 Q. Okay. Have you seen Exhibit 231 before
3 today?

4 A. Can I match it up with the one that I
5 brought?

09:46

6 Q. I suppose so.

7 A. I mean, I guess. Let me just -- yeah.
8 Hold on. Let me just make sure.

9 Yes.

10 Q. Okay. As a general matter, did you
11 understand that this exhibit was asking for certain
12 documents in connection with this litigation?

09:46

13 A. Yes.

14 Q. Did you search for the documents that were
15 asked for in this subpoena?

09:46

16 A. Yes.

17 Q. What did you do to search for the
18 documents?

19 A. Well, it's very difficult, but I'll tell
20 you what I did. I brought with me the only contract
21 that I could get. However, as far -- I don't -- I
22 hope it's even worthy. I guess it is. I think it
23 matched up to one of these things that was said in
24 here. It's an employment contract recently.

09:47

25 As far as everything else, I lost my

09:47

Veritext Corporate Services

800-567-8658

EXHIBIT

E

973-410-4040

PAGE

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1 storage in 2007. I mean, I lost my life in 2007. I
2 ended up in a motel room for three months. I lost
3 everything. I had two suitcases, three black
4 dresses, a sweater, a laptop, and that's it. So
5 every single piece of paperwork I've ever had is 09:47
6 gone. And that -- go for it. You know, go to the
7 public -- I mean, that's exactly what happened.

8 Then I went to my e-mail address and I
9 tried to get an old one that I've never been able to
10 get into. But I just realized, I got that probably 09:47
11 2005 or 2006 anyway, so it's not even one that would
12 have had any e-mails. And nor do I think I even got
13 any e-mails from Norm. Maybe I did. But it would
14 have been in some -- I don't even remember my old
15 e-mail address. 09:48

16 Q. Specifically what steps did you take to
17 locate documents that were responsive to
18 Exhibit 231?

19 A. Well, most I could not get because it would
20 have been in storage. Okay. So everything that I 09:48
21 even -- hold on. Here is --

22 Q. I mean, I understand you testified a moment
23 ago that you lost some documentation in storage.
24 What I'm asking here is, what steps did you take in
25 order to locate documents that had not been lost? 09:48

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973-410-4040

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1 Q. That was Buchwald. Okay. Anyone else?

2 A. Well, let me think. Hold on. That would
3 have contracts?

4 See, there are a couple agencies I joined
5 briefly, but I didn't work through them. So -- hold 09:54
6 on, hold on. Buchwald was the biggie for me. Okay.
7 That's acting.

8 Let me think about modeling for a second.
9 Oh, boy. I've been freelance for so long.
10 Buchwald, if you want to go back that far. But it 09:54
11 was about -- it was quite a while ago.

12 Q. So there's no one else that comes to mind?

13 A. Hold on. This is one place where I'm going
14 to have to put a note. Let me just rack my brain.

15 Can you give me one second? I just want to 09:55
16 write it down. Do you have a pen?

17 Peter Strain Agency. They might have --
18 maybe eight years ago. That was the last agency I
19 really ever worked through. Peter Strain Agency.

20 Q. Anyone else? 09:56

21 A. Not that I can recall at the moment.

22 Q. Okay. In reviewing Google's document
23 requests, were there any documents called for in our
24 request that you know were lost or destroyed?

25 A. Yes. All my employment contracts, like, 09:56

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973-410-4040

EXHIBIT

E

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1 you know, anything that was freelance that came
2 through me that I negotiated myself, that's gone.

3 You know what? The other stuff that you
4 have, a lot of stuff between me and Perfect 10, that
5 doesn't really exist. I never had anything really 09:56
6 besides the actual contract thing that was signed
7 years ago. I mean, there really wasn't anything
8 else.

9 Q. Okay. Now, you are familiar with the
10 Perfect 10 -- the Google litigation, correct? 09:57

11 A. I'm gaining speed in the last month or two.
12 I didn't even know it was in existence. I mean, I
13 didn't know it had happened.

14 Q. Do you have an understanding as to whether
15 Perfect 10 is asserting violations of your rights of 09:57
16 publicity in this case?

17 A. What does that mean?

18 MS. KINCAID: Objection. Vague and
19 ambiguous. Calls for a legal conclusion.

20 BY MR. DOYLE: 09:57

21 Q. It's a simple yes or no question.

22 A. I'm sorry, say that again?

23 Q. Do you have an understanding as to whether
24 Perfect 10 is asserting violations of your rights of
25 publicity in this case? 09:57

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EXHIBIT

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1 conclusion. Calls for speculation. Vague and
2 ambiguous. The witness's testimony speaks for
3 itself.

4 THE WITNESS: Yeah, someone did, yeah.

5 BY MR. DOYLE:

11:35

6 Q. We spoke earlier today about your efforts
7 to locate documents that were responsive to the
8 subpoena that you received. We've discussed now
9 several hundred projects, which would entail quite a
10 bit of paperwork. Do you have any of those
11 agreements in your files?

11:35

12 A. The old stuff?

13 Q. Yes.

14 A. No. It was lost in storage.

15 Q. Do you know where we could look to locate
16 those agreements?

11:35

17 A. Who bought the storage?

18 Q. No, no. Any other sources of the
19 agreements?

20 MS. KINCAID: Objection. Vague and
21 ambiguous.

11:35

22 THE WITNESS: Well, I don't know if even
23 agencies hold on to that type of thing. Possibly.
24 I'm not really sure.

25 ////

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EXHIBIT

E

973-410-4040

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1 BY MR. DOYLE:

2 Q. Okay.

3 A. Unless -- unless -- we've tried to find the
4 storage ourselves, because I would love my stuff
5 back. They won't release the name of who bought it. 11:36
6 Someone auctions it and buys it, and unless you can
7 get that --

8 Q. Did anyone tell you that you needed to
9 preserve documents that related to the Perfect 10
10 versus Google litigation? 11:36

11 A. No.

12 MS. KINCAID: Objection. Vague and
13 ambiguous.

14 THE WITNESS: No. Nor could I.

15 BY MR. DOYLE: 11:36

16 Q. Let's transition over to your work as an
17 actress. When did you begin working as an actress?

18 A. I started acting probably right around '94,
19 '95.

20 Q. And this would include both film work and 11:37
21 television work, correct?

22 A. Yes. Yes.

23 Q. Why don't we break it down into those two
24 categories.

25 When did you first do work as a film 11:37

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EXHIBIT

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1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)
4

5 I, Kathleen E. Barney, a Certified
6 Shorthand Reporter, do hereby certify:

7 That prior to being examined, the witness
8 in the foregoing proceedings was by me duly sworn to
9 testify to the truth, the whole truth, and nothing
10 but the truth;

11 That said proceedings were taken before me
12 at the time and place therein set forth and were
13 taken down by me in shorthand and thereafter
14 transcribed into typewriting under my direction and
15 supervision;

16 I further certify that I am neither counsel
17 for, nor related to, any party to said proceedings,
18 nor in anywise interested in the outcome thereof.

19 In witness whereof, I have hereunto
20 subscribed my name.

21 Dated: December 5, 2009

22
23 Kathleen E. Barney (KA)

24 Certified Shorthand Reporter

25 CSR No. 5698

Veritext Corporate Services

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973-410-4040

EXHIBIT E

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EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PERFECT 10, INC., a California
corporation,

Plaintiff,

v.

AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation;
ALEXA INTERNET, INC., a
corporation, and DOES 2 through 10,
inclusive,

Defendants.

PERFECT 10, INC.,

Plaintiff,

v.

GOOGLE, INC., a corporation, and
DOES 1-100, inclusive

Defendants.

Case No. CV05-4753 AHM (SHx)
CONSOLIDATED WITH CASE NO.
CV04-9484 AHM (SHx)

**[PROPOSED] ORDER GRANTING
IN PART GOOGLE INC.'S MOTION
TO COMPEL PERFECT 10 TO
PRODUCE COMPLETE AND
UNREDACTED FINANCIAL
DOCUMENTS AND OTHER
DAMAGES-RELATED
DOCUMENTS, AND AMAZON.COM
AND ALEXA INTERNET'S JOINDER
THEREIN**

Hon. Stephen J. Hillman

Date: September 22, 2009
Time: 10:00 A.M.
Courtroom: 550

Discovery Cutoff: None Set
Pretrial Conference Date: None Set
Trial Date: None Set

[PROPOSED] ORDER
CASE NO. CV05-4753 AHM (SHx) CONSOLIDATED WITH CV04-9484 AHM (SHx)

EXHIBIT

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29

~~PROPOSED~~ ORDER

On September 22, 2009, the Court heard argument on various discovery matters raised in Defendant Google Inc.'s Motion to Compel Perfect 10 (1) To Produce Documents, (2) To Comply With The Protective Order, and (3) To Affix Document Control Numbers To Its Document Production, including disputes relating to financial documents and certain related issues arising from the planned deposition of Perfect 10's accountant Bruce Hersh.¹ Defendants Amazon.com and Alexa.com filed an application to join in portions of that motion and to raise these related issues, and which the Court hereby GRANTS. Having considered the parties' respective briefs and oral argument, and good cause existing therefore, the Court HEREBY ORDERS that Google's Motion and the Amazon Defendants' joinder therein is GRANTED IN PART AND DENIED IN PART, as follows:

1. Perfect 10 is ordered to produce copies of all of its periodic and annual financial statements and tax returns to the extent such documents exist, including those in the possession of its outside accountant Bruce Hersh, in complete and unredacted form, with the following two exceptions:

a. With respect to medical expenses, the names of patients and treating physicians may be redacted;

b. With respect to credit card expenses, Perfect 10's credit card numbers may be redacted.

Perfect 10 must produce such documents in complete and unredacted form (with the two exceptions noted above) by October 16, 2009.

¹ Google only asked the Court to rule on Issues I, VII, VIII, and IX at the September 22, 2009 hearing, so the Court did not reach Issues II – VI presented in the parties' Joint Stipulation On Google Inc.'s Motion to Compel Perfect 10 (1) To Produce Documents, (2) To Comply With The Protective Order, and (3) To Affix Document Control Numbers To Its Document Production. This Order rules on Issue I in the aforementioned Joint Stipulation (and the related issues implicated by the upcoming deposition of Mr. Hersh).

~~PROPOSED~~ ORDER

CASE NO. CV05-4753 AHM (SHX) CONSOLIDATED WITH CV04-9484 AHM (SHX)

EXHIBIT

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These issues will be taken up at a later date upon Google's noticed motion

1 not already been produced, and to the extent that they exist and can be located with a
2 reasonable search, by October 26, 2009.

3 The foregoing is made without prejudice to any defendant seeking additional
4 documents responsive to the document requests considered at the hearing or
5 requested in deposition subpoenas served upon accountant Bruce Hersh.

6 IT IS SO ORDERED.
7

8 Date: 10-6-09


Hon. Stephen J. Hillman
United States Magistrate Judge

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[PROPOSED] ORDER

CASE NO. CV05-4753 AHM (SHX) CONSOLIDATED WITH CV04-9484 AHM (SHX)

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1 [COUNSEL LISTING ON FOLLOWING
2 PAGE]

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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 PERFECT 10, INC., a California
11 corporation,

12 Plaintiff,

13 vs.

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

15 Defendants.

16 AND COUNTERCLAIM

17 PERFECT 10, INC., a California
18 corporation,

19 Plaintiff,

20 vs.

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

23 Defendants.

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

DISCOVERY MATTER

**JOINT STIPULATION ON
GOOGLE INC.'S MOTION TO
COMPEL PERFECT 10 (1) TO
PRODUCE DOCUMENTS, (2) TO
COMPLY WITH PROTECTIVE
ORDER, AND (3) TO AFFIX
DOCUMENT CONTROL
NUMBERS TO ITS DOCUMENT
PRODUCTION**

Hon. Stephen J. Hillman

Date: June 1, 2009

Time: 2:00 PM

Ctrm.: 550

Discovery Cutoff: None Set
Pretrial Conference Date: None Set
Trial Date: None Set

PUBLIC REDACTED

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

JOINT STIPULATION ON GOOGLE'S MOTION TO COMPEL

EXHIBIT

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1 reports Perfect 10 has produced to Google are certain monthly financial statements,
 2 Perfect 10 has refused to produce -- or explain its reasons for not producing -- over
 3 four years' worth of these monthly financial reports. Second, many of the reports
 4 (and tax returns) that Perfect 10 has produced are substantially redacted based on
 5 improper claims of irrelevance and confidentiality -- claims that are directly
 6 contradicted by its claim for monetary damages and the terms of the Protective
 7 Order in this case. Third, the financial statements that Perfect 10 has produced are
 8 summaries of Perfect 10's financial condition, necessarily based on other financial
 9 documents that Google must have to assess Perfect 10's claimed damages. Perfect
 10 10 has no basis for withholding these source documents. Perfect 10 should be
 11 compelled to produce complete and unredacted copies of its tax returns, monthly
 12 financial statements and other supporting documents related to the information
 13 summarized in those monthly financial statements.

14 2. **Perfect 10 Has Failed To Produce Financial Reports**
 15 **Covering Many Months**

16 Perfect 10's production of financial documents consists of select monthly
 17 financial statements dating back to 1997. However, there are at least 51 such
 18 monthly financial statements that are still missing from Perfect 10's production. See
 19 Kassabian Decl. ¶ 51, and at Exs. HH & II. Specifically, Perfect 10 has produced no
 20 monthly financial statements for the following months:

21 1997	January, February, March, April, May, June, July, September and
22	October
23 1998	November
24 1999	April, May, June, July, August, September, October and November
25 2000	January, February, April, May, June, July, August, September,
26	October, November and December
27 2001	January, February, March, April and May
28	

1	2002	February, June, July, August and October
2	2003	June and August
3	2004	March and April
4	2005	February
5	2006	January and February
6	2007	February, May, June, August, October and November
7	2008	January, February, March, April, May, June, July, September,
8		October

10 During the meet and confer process, Perfect 10 refused to confirm whether it
 11 has these missing financial statements in its possession, and if not, what happened to
 12 them. These are obviously critical issues. For example, if Perfect 10 destroyed the
 13 financial records just prior to or during this litigation, then Google is entitled to
 14 pursue spoliation sanctions against Perfect 10, and to ask the Court to strike Perfect
 15 10's claims of infringement and/or for damages (to the extent Perfect 10 has not
 16 waived them already). Perfect 10 should be ordered to produce these documents
 17 without further delay, or to submit a sworn affidavit explaining what happened to
 18 these documents, and why it was not able to locate and produce these documents
 19 that clearly existed at one point in time. See Buchanan, 206 F.R.D. 123, 125 (D.
 20 Md. 2002); Rockwell Int'l Corp. v. H. Wolfe Iron & Metal Co., 576 F.Supp. 511,
 21 512 (W.D. Pa. 1983); Fed. R. Civ. P. 34(a).

22 3. Perfect 10's Production Contains Improper Redactions

23 Many of the financial statements and tax returns that Perfect 10 did produce
 24 are heavily redacted, rendering them useless in assessing Perfect 10's financial
 25 condition. For instance, Perfect 10 has redacted categories of information highly
 26 relevant to Perfect 10's claims of damages, [REDACTED]
 27 [REDACTED]
 28

1 **PERFECT 10'S CONCLUSION**

2 For the reasons set forth above, Google's motion should be denied in its
3 entirety. Google should be ordered to reimburse Perfect 10 for the fees it has been
4 forced to incur in opposing an unnecessary motion.

5
6 DATED: May 6, 2009

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

7
8 By /s/ Rachel Herrick Kassabian
9 Rachel Herrick Kassabian
10 Attorneys for Defendant Google Inc.

11 DATED: May 6, 2009

THE LAW OFFICES OF JEFFREY N.
MAUSNER

12
13 By /s/ Jeffrey N. Mausner
14 (with permission)
15 Jeffrey N. Mausner
16 Valerie E. Kincaid
17 Attorneys for Plaintiff Perfect 10. Inc.

EXHIBIT G

Thomas Nolan

From: Rachel Herrick Kassabian
Sent: Tuesday, January 05, 2010 1:24 PM
To: Jeffrey Mausner
Cc: 'Jansen, Mark T. '; trcahn@townsend.com; ajmalutta@townsend.com; 'Steiner, Elham F.';
'Valerie Kincaid'; Thomas Nolan; Michael T Zeller; Brad R. Love
Subject: RE: Perfect 10, Inc. v. Google Inc.: Production of Financial Documents

Jeff,

You still have not answered our questions. I will restate them below for ease of reference -

1. With regard to the December 31, 2001 and June 30, 2004 financial statements, are you saying that the original unredacted versions have been lost or destroyed? That's what it sounds like you are saying -- please confirm if this is NOT the case.
2. For each of the following missing monthly financial statements (other than the 2007 statements), please identify which specific statements (1) were lost or destroyed (and how/when), and which (2) were never created in the first place:

1997	January, February, March, April, May, June, July, September and October
1998	November
1999	April, May, June, July, August, September, October and November
2000	January, February, April, May, June, July, August, September, October, and November
2001	January, February, March, April and May
2002	February, June, July, August and October
2003	June and August
2004	March and April
2005	February
2006	January and February
2007	February, May, June, August, October and November According to P10, these were not generated in the first place.
2008	January, February, April, July, October, and November

EXHIBIT

PAGE

2009

January, February, April, June, July, and August

These questions have been outstanding for six weeks. Your prompt response by the close of business today would be appreciated.

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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www.quinnemanuel.com

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

Sent: Tuesday, January 05, 2010 11:28 AM

To: Rachel Herrick Kassabian

Cc: 'Jansen, Mark T. '; trcahn@townsend.com; ajmalutta@townsend.com; 'Steiner, Elham F.'; 'Valerie Kincaid'; Thomas Nolan; Michael T Zeller; Brad R. Love

Subject: RE: Perfect 10, Inc. v. Google Inc.: Production of Financial Documents

Rachel: On November 23, 2009, Perfect 10 responded to Google's informal discovery requests. That response included answers to what you asked in your November 25, 2009 request for additional informal discovery. However, in an ongoing effort to respond to Google's inquiries, we will repeat what we said already, and see if there is anything more we can do.

With regard to the December 31, 2001 and June 30, 2004 financial statements, Perfect 10 could not locate unredacted copies. Of course, we checked with Mr. Hersh's office. Please identify any redacted information that Google believes is relevant and not discernible from other sources. As you know, Perfect 10 provided Google with unredacted statements before and after those dates. Google has accountants/experts who know if there is any redacted information that is not in those previous and subsequent statements. Is there something Google believes is missing?

With regard to the 2007 monthly statements that were not produced, those documents were not generated. A financial statement is not generated by Perfect 10's accountant every month. Once again, Perfect 10 produced statements for the previous and subsequent months. Have Google's accountants/experts identified something specific they believe is missing?

Perfect 10 produced its existing financial statements, therefore, there is nothing more for it to do.

EXHIBIT

G

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Also, how does any of this relate to the pending motions for document preservation orders?
Google has not raised any such issue. Jeff.

From: Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]
Sent: Monday, January 04, 2010 2:32 PM
To: 'Jeffrey Mausner'
Cc: 'Jansen, Mark T. '; 'trcahn@townsend.com'; 'ajmalutta@townsend.com'; 'Steiner, Elham F.'; 'Valerie Kincaid'; Thomas Nolan; Michael T Zeller; Brad R. Love
Subject: RE: Perfect 10, Inc. v. Google Inc.: Production of Financial Documents

Jeff,

It has been nearly six weeks since we sent you the November 25th email below. P10 still has not responded. Given the pendency of Google's document preservation motion and the upcoming hearing on same, it is imperative that P10 respond now. Please do so by noon tomorrow, January 5.

Rachel Herrick Kassabian | Partner
Quinn Emanuel Urquhart Oliver & Hedges LLP
555 Twin Dolphin Drive, Suite 560
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650.801.5005 Direct
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From: Thomas Nolan
Sent: Friday, December 11, 2009 1:02 PM
To: 'Jeffrey Mausner'
Cc: 'Jansen, Mark T. '; 'trcahn@townsend.com'; 'ajmalutta@townsend.com'; 'Steiner, Elham F.'; Rachel Herrick Kassabian; 'Valerie Kincaid'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Production of Financial Documents

Jeff,

Please respond to this email.

Best Regards,

Thomas Nolan
Associate,
Quinn Emanuel Urquhart Oliver & Hedges LLP.

865 S. Figueroa St 10th Floor
Los Angeles, Ca 90017
213-443-3885 Direct
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From: Rachel Herrick Kassabian
Sent: Wednesday, November 25, 2009 11:16 AM
To: 'Jeffrey Mausner'; Thomas Nolan
Cc: 'Jansen, Mark T. '; 'trcahn@townsend.com'; 'ajmalutta@townsend.com'; 'Steiner, Elham F.'; 'Valerie Kincaid'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Production of Financial Documents

Jeff,

Thanks for your email. With regard to the December 31, 2001 and June 30, 2004 financial statements, are you saying that the original unredacted versions have been lost or destroyed? And has P10 checked with Mr. Hersh's office to see if he maintained copies?

Please also identify:

- (1) which of the missing financial statements were generated, but lost or destroyed (and what happened to those documents), and
- (2) which of the missing financial statements were never created in the first place.

Thanks,

Rachel

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From: Jeffrey Mausner [mailto:jeff@mausnerlaw.com]
Sent: Monday, November 23, 2009 7:37 AM
To: Thomas Nolan
Cc: 'Jansen, Mark T. '; 'trcahn@townsend.com'; 'ajmalutta@townsend.com'; 'Steiner, Elham F.'; Rachel Herrick Kassabian; 'Valerie Kincaid'
Subject: RE: Perfect 10, Inc. v. Google Inc.: Production of Financial Documents

Rachel: This is in response to your letter dated November 4, 2009 regarding financial statements. Per the Court's October 6 order, Perfect 10 produced the financial statements the

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Court ordered it to produce "to the extent such documents exist." (See October 6, 2009 Order, paragraph 1.)

With regard to the December 31, 2001 and June 30, 2004 financial statements, Perfect 10 only has the copies it produced. We have been unable to locate unredacted copies.

With regard to financial statements that Perfect 10 did not produce for relatively recent years (for example 2007), those documents don't exist because they were not generated. Jeff.

From: Thomas Nolan [mailto:thomasnolan@quinnemanuel.com]

Sent: Wednesday, November 04, 2009 11:54 AM

To: Jeffrey Mausner

Cc: 'Jansen, Mark T. '; tcahn@townsend.com; ajmalutta@townsend.com; Steiner, Elham F.; Rachel Herrick Kassabian; 'Valerie Kincaid'

Subject: Perfect 10, Inc. v. Google Inc.: Production of Financial Documents

Jeff,

Please see the attached.

Best Regards,

Thomas Nolan

Associate,

Quinn Emanuel Urquhart Oliver & Hedges LLP.

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WRITER'S DIRECT DIAL NO.
(650) 801-5005

WRITER'S INTERNET ADDRESS
rachelkassabian@quinnemanuel.com

November 4, 2009

VIA E-MAIL & U.S. MAIL

Jeffrey N. Mausner, Esq.
Warner Center Towers
21800 Oxnard Street, Suite 910
Woodland Hills, CA 91367
jeff@mausnerlaw.com

Re: *Perfect 10, Inc. v. Google Inc.*: Production of Financial Documents

Dear Jeff:

In reviewing Perfect 10's October 15, 2009 production of its unredacted financial statements and tax returns pursuant to the Court's October 6 Order, we have discovered that Perfect 10's June 30, 2004 and December 31, 2001 financial statements still contain several impermissible redactions, including numerous redactions concerning the Beverly Park property. We presume this was an inadvertent oversight, as these two monthly statements appear to be unchanged from those versions produced by Perfect 10 earlier in this litigation. Please produce complete and unredacted versions of Perfect 10's financial statements for June 30, 2004 and December 31, 2001, consistent with the Court's October 6 Order.

Additionally, Judge Hillman's October 6 Order obligates Perfect 10 to produce "all of its periodic and annual financial statements . . . to the extent such documents exist." *Id.* In previous letters to Perfect 10 dated March 18, 2008 and August 28, 2008, Google noted that in spite of the fact that Perfect 10 maintains its financial statements on a monthly basis, there were numerous gaps in Perfect 10's production. These deficiencies were neither corrected nor explained by the October 15, 2009 production. As just one example, for the year 2007 (during the pendency of this litigation), Perfect 10 failed to produce financial statements for the months of February, May, June, August, October, and November. Please produce all of these missing financial statements (as itemized in Google's March 18, 2008 and August 28, 2008 correspondence). If

quinn emanuel urquhart oliver & hedges, llp

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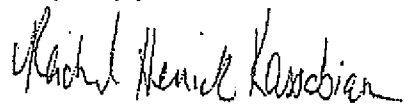
EXHIBIT 3

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such documents are no longer in Perfect 10's possession, custody or control (including in Mr. Hershey's files), please explain what happened to them.

Please provide all of the above-referenced documents and information on or before November 9, 2009.

Very truly yours,



Rachel Herrick Kassabian

RHK/brl
01980.51320/3184187.4

EXHIBIT H

EXHIBIT H:
Filed Under Seal Pursuant to
Protective Order