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10 11 12	PERFECT 10, INC., a California corporation, Plaintiff,	Case No. CV 04-9484 AHM (SHx) Consolidated with Case No. CV 05-4753 AHM (SHx)
13	V.	Before Judge Stephen J. Hillman
14	GOOGLE INC., a corporation,	REQUEST FOR TELEPHONIC CONFERENCE WITH JUDGE
15	Defendants.	HILLMAN
16		Date: None set
17 18	AND CONSOLIDATED CASE.	Time: None set Place: Courtroom 550, Courtroom of the Honorable Stephen J. Hillman
19		
20		Discovery Cut-Off Date: None Set Pretrial Conference Date: None Set
21		Trial Date: None Set
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	Request For Telephonic Conference With Judge Hillman	
		Dockets.J

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REQUEST FOR TELEPHONIC CONFERENCE

Perfect 10 requests a telephonic follow-up conference with the Court to discuss the following important documents, which Perfect 10 has attempted to obtain from Google without success. *See* emails between Jeff Mausner and Rachel Herrick Kassabian, attached as Exhibit 1 to Declaration of Jeffrey N. Mausner in Support of Perfect 10's Request for Telephonic Conference With Judge Hillman ("Mausner Decl."), submitted herewith. These documents are directly relevant to pending summary judgment motions before Judge Matz. During the hearing on January 15, this Court stated that it would make itself available for a telephonic conference if the parties were not able to resolve the issues regarding the production of these documents. The Court stated, among other things, the following:¹

I am concerned with moving this lengthy case along and I am very interested in getting P10 the DMCA log as it exists in Excel spreadsheet format. I am interested in getting them all DMCA notices. And I am very concerned with the over-arching Blogger discovery issue. If Google is prepared to state on the record that they would produce the DMCA log in the excel spreadsheet format today, that would be useful, as well as all DMCA notices, including Blogger notices. I don't want to bludgeon you into that if you're not prepared to do that today, but I think that's, you know, likely what I would order produced if there was a motion. ...

I said I'm not going to bludgeon you into agreeing to that today. I would ask you to try to resolve this particular issue without a motion. I'd like you to try to resolve the DMCA – all DMCA notices issue – without a motion. And on the blogger discovery document request 51, etcetera. ...

- 1 -

¹ This is an unofficial transcription of portions of the audio recording, rather than the official transcript, which has not been completed.

Let's see what happens over the next week or so. And I can resolve all of this, I think, on a telephonic conference without briefing, if necessary.

In addition to the documents mentioned above, the other documents set forth in the emails to Ms. Kassabian (Exh. 1 to Mausner Decl.) should also be resolved in the conference, including but not limited to:

1. All notices of termination issued by Google as a result of alleged intellectual property violations. These notices are directly relevant to whether Google has suitably implemented a policy against repeat infringers, which directly affects its pending motions for summary judgment. Google has only produced a handful of such notices, none dated after March 4, 2006, and none resulting from any complaints other than Perfect 10's. Perfect 10 is entitled to all such notices, as ordered by this Court in May of 2006. *See* Judge Hillman's May 22, 2006 Order, page 5, lines 15-20, RFP 26 and 27: "All notices of termination issued by Google as a result of alleged intellectual property violations."

2. The DMCA log, produced as an excel spreadsheet, should include each of the URLs identified by Perfect 10 in its notices, and what actions Google took in response to each such URL and when. This is important to Google's pending summary judgment motions, as it is directly relevant to whether Google acted expeditiously in response to Perfect 10's notices. *See* RFP 51, 155, 196, and Interrogatory 33, and the Orders issued by both Judge Hillman and Judge Matz thereon.

Perfect 10 is available for a telephone conference any day this week.

Dated: January 26, 2010

LAW OFFICES OF JEFFREY N. MAUSNER By: <u>Jeffrey N. Mausner</u>

> Jeffrey N. Mausner Attorney for Plaintiff Perfect 10, Inc.