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9 Attorneys for Defendant GOOGLE INC.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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 Case No. CV 05-  
4753 AHM (SHx)]

**DISCOVERY MATTER**

**DECLARATION OF THOMAS  
NOLAN IN SUPPORT OF GOOGLE  
INC.'S REQUEST FOR AN ORDER  
REQUIRING SERVICE OF THE  
UNDER SEAL VERSION OF THE  
AMAZON DEFENDANTS'  
MOTION TO COMPEL  
PRODUCTION OF THE  
MICROSOFT SETTLEMENT  
AGREEMENT (AND ALL  
SUPPORTING UNDER SEAL  
DOCUMENTS)**

Hon. Stephen J. Hillman

Date: None set  
Time: None set  
Crtrm.: 550

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

1 I, Thomas Nolan, declare as follows:

2 1. I am a member of the bar of the State of California and an associate with  
3 Quinn Emanuel Urquhart Oliver & Hedges, LLP, counsel for Defendant Google Inc.  
4 in this action. I make this declaration of my personal and firsthand knowledge and, if  
5 called and sworn as a witness, could and would testify competently thereto.

6 2. On January 22, 2010, I asked counsel for the Amazon Defendants if they  
7 would serve Google with the under seal version of the Joint Stipulation re. Amazon  
8 Defendants' Motion to Compel Production of Microsoft Settlement Agreement  
9 (Docket No. 368 in the consolidated case). That same day, counsel for the Amazon  
10 Defendants explained that they could not do so, because as a condition for receiving  
11 certain information about the settlement from Microsoft, Microsoft required the  
12 Amazon Defendants to agree that they would not further disclose that information to  
13 Google or its attorneys.


14 3. On January 25, 2010, I emailed Jeffrey Mausner, counsel of record for  
15 Perfect 10, Inc., requesting that Perfect 10 serve Google with the under seal version  
16 of this Joint Stipulation on Amazon's Motion to Compel, along with any other  
17 documents filed under seal in connection with this Motion (Docket Nos. 368 and 369  
18 in the consolidated case). The following day Mr. Mausner refused, stating that  
19 Perfect 10 and Microsoft have not consented to Google seeing the Microsoft  
20 settlement agreement, and that "[t]herefore, Google is not entitled to see the redacted  
21 material." A true and correct copy of this email exchange is attached hereto as  
22 Exhibit A.

23 4. As of the date of this Declaration, neither Perfect 10 nor the Amazon  
24 Defendants have served Google with the under seal version of the Amazon Motion to  
25 Compel (and all supporting under seal documents).

26 5. On August 11, 2009, Google served Perfect 10 with a Request for  
27 Production of Documents seeking production of the settlement agreement in the  
28

1 *Microsoft* case. Perfect 10 served written objections to this Request and, to date, has  
2 not produced this settlement agreement to Google in this action.

3 I declare under penalty of perjury under the laws of the United States of  
4 America that the foregoing is true and correct. Executed January 27, 2010 at Los  
5 Angeles, California.

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8 Thomas Nolan

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# **EXHIBIT A**

**Thomas Nolan**

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**From:** Thomas Nolan  
**Sent:** Tuesday, January 26, 2010 2:49 PM  
**To:** 'Jeffrey Mausner'  
**Cc:** Michael T Zeller; Rachel Herrick Kassabian; mtjansen@townsend.com; Timothy Cahn; glcincone@townsend.com; Steiner, Elham F.; Anthony Malutta; Isabella Fu  
**Subject:** RE: Perfect 10 v. Google/Amazon: Amazon's Motion to Compel the Microsoft Settlement Agreement

Jeff,

The *Google* and *Amazon* cases have been consolidated for discovery purposes. See Consolidation Order (Dkt. No. 34); Stay Order (Dkt. No. 400). Pursuant to those Orders and the Protective Order, Google is entitled to be (and must be) served with everything that is filed in the consolidated *Amazon* case. Please reconsider Perfect 10's position not to serve Google with the under seal filings. If we cannot resolve this by the close of business today, we will seek relief from the Court.

Best Regards,

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

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**From:** Jeffrey Mausner [mailto:jeff@mausnerlaw.com]  
**Sent:** Tuesday, January 26, 2010 9:12 AM  
**To:** Thomas Nolan  
**Cc:** Michael T Zeller; Rachel Herrick Kassabian; mtjansen@townsend.com; Timothy Cahn; glcincone@townsend.com; Steiner, Elham F.; Anthony Malutta; Isabella Fu  
**Subject:** RE: Perfect 10 v. Google/Amazon: Amazon's Motion to Compel the Microsoft Settlement Agreement

Hi Tom: Perfect 10 and Microsoft have consented to Amazon seeing a certain portion of the Microsoft Settlement Agreement, because it relates to Amazon. However, neither Perfect 10 nor Microsoft has consented to Google seeing it. Therefore, Google is not entitled to see the redacted material. Jeff.

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**From:** Thomas Nolan [mailto:thomasnolan@quinnemanuel.com]  
**Sent:** Monday, January 25, 2010 10:00 PM  
**To:** jeff@mausnerlaw.com  
**Cc:** Michael T Zeller; Rachel Herrick Kassabian  
**Subject:** Perfect 10 v. Google/Amazon: Amazon's Motion to Compel the Microsoft Settlement Agreement

Jeff,

Please send us the unredacted versions of the Joint Stipulation on the Amazon Defendants' motion to compel the *Microsoft* settlement agreement (Dkt. No. 364) and any other documents filed under seal in connection with that motion.

Best Regards,

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

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