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9	Attorneys for Defendant GOOGLE INC.		
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11	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA		
12		CASE NO. CV 04-9484 AHM (SHx)	
13 14	PERFECT 10, INC., a California corporation,	[Consolidated with Case No. CV 05- 4753 AHM (SHx)]	
15	Plaintiff,	DISCOVERY MATTER	
16	VS.	GOOGLE INC.'S NOTICE OF	
17	GOOGLE INC., a corporation; and DOES 1 through 100, inclusive,	JOINDER IN THE AMAZON DEFENDANTS' MOTION TO COMPEL PRODUCTION OF THE	
18	Defendants.	MICROSOFT SETTLEMENT AGREEMENT	
19	AND COUNTERCLAIM	Hon. Stephen J. Hillman	
20 21	PERFECT 10, INC., a California corporation,	Date: February 16, 2010 Time: 2:00 p.m. Crtrm.: 550	
22	Plaintiff,	Discovery Cutoff: None Set	
23	VS.	Pretrial Conference Date: None Set Trial Date: None Set	
24	AMAZON.COM, INC., a corporation; A9 COM, INC., a corporation; and		
25	A9.COM, INC., a corporation; and DOES 1 through 100, inclusive,		
26	Defendants.		
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28			
01980.51320/3306323.2	GOOGLE INC.'S NOTICE OF JOINDER IN THE AMAZON DEFENDANTS' MOTION TO COMPEL		
	Dockets.Justia		

1 TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR COUNSEL2 OF RECORD:

PLEASE TAKE NOTICE that Defendant Google Inc. hereby joins in the
Amazon Defendants' Motion to Compel Production of the Microsoft Settlement
Agreement, filed January 20, 2010 (Dkt. No. 364 in the consolidated case), set for
hearing before the Court on February 16, 2010.

7 The Amazon Defendants seek to compel production of the settlement 8 agreement that resolved Perfect 10, Inc.'s ("P10") also-consolidated case against 9 Microsoft. As with the Amazon Defendants, Google has served a Request for 10 Production of this document, and P10 has refused to produce it. See Declaration of 11 Thomas Nolan ("Nolan Decl.") filed concurrently, at Exhs. A (Google's Request for Production) and B (P10's Response). And like the Amazon Defendants, Google has 12 13 meet-and-conferred with P10 repeatedly—and unsuccessfully—seeking production of this document. Id. at Exh. C (meet-and-confer correspondence). Since both Amazon 14 and Google seek production of this same document, in order to conserve the Court's 15 valuable resources, Google now joins in the Amazon Defendants' motion for an order 16 compelling production of this document. 17

The Amazon Defendants have explained that this document is relevant to
several issues in the *Amazon* case. See Joint Stipulation on Motion to Compel ("Joint
Stipulation") (Dkt. No. 364 in the consolidated case).¹ Specifically, the Amazon
Defendants argue that "the agreement is potentially highly relevant to issues of
liability and damages, and certainly is reasonably likely to lead to the discovery of

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¹ To avoid burdening the Court with repetitive briefing, Google hereby
incorporates by reference the relevant portions of both this Joint Stipulation (Dkt. No.
364 in the consolidated case) and the Amazon Defendants' Supplemental Brief in
support of its Motion to Compel ("Amazon's Supplemental Brief") (Dkt. No. 370 in
the consolidated case).

admissible evidence [on those issues]," and that the agreement "would provide one
 measure of the value of Perfect 10's copyrighted works." <u>Id.</u> at 7, 12.

3 These same arguments apply with equal force in the *Google* case. The two cases have been consolidated for discovery purposes, and in each case P10 asserts 4 5 many of the same copyrighted works and the same general theories of liability and claims for damages. As such, the settlement agreement is equally relevant to P10's 6 7 theories of liability and damages in both cases—including, for example, to the alleged 8 value of P10's copyrighted works. See Joint Stipulation at 7 and 12 (and authorities cited therein). See also Smith v. NBC Universal, 2008 WL 483604, at *4 (S.D.N.Y. 9 10 Feb. 22, 2008) (amount of prior settlement can be "relevant to [the jury's] determination of statutory damages"); Atmel Corp. v. Authentec Inc., 2008 WL 11 276393, at *1-2 (N.D. Cal. Jan. 31, 2008) (holding that settlement agreements 12 13 containing licenses were, at a minimum, relevant to damages); Phoenix Solutions Inc. v. Wells Fargo Bank, N.A., 254 F.R.D. 568, 584 (N.D. Cal. 2008) ("The court 14 recognizes the right of parties to contract for confidential settlement terms and the 15 important policies underlying Federal Rule of Evidence 408 to encourage settlement. 16 However, Rule 408 does not warrant protecting settlement negotiations from 17 18 discovery. On its face, the rule applies to the admissibility of evidence at trial, not to whether evidence is discoverable."); Abbott Diabetes Care Inc. v. Roche Diagnostics 19 Corp., 2007 WL 4166030, at *2 (N.D. Cal. Nov. 19, 2007) (finding that a "settlement 20agreement has considerable probative value for a factfinder's determination of 21 22 whether LifeScan's products constitute acceptable non-infringing substitutes in the relevant market").² 23

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² Further, to the extent P10 claims it need not disclose the settlement *agreement* because it has disclosed the settlement *amount*, that argument fails. See Fryer v.
 <u>Brown</u>, 2005 WL 1677940, at *6 (W.D. Wash. Jul. 15, 2005) ("Plaintiff is also
 instructed to provide Defendant with the sources of documents Plaintiff used in
 (footnote continued)

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1	Moreover, as the Amazon Defendants have identified, the Protective Order	
2	provides more than adequate protection to address P10's confidentiality objections—	
3	indeed, many courts have compelled disclosure of settlement agreements subject to a	
4	protective order. See Joint Stipulation at 9-14 and Amazon's Supplemental Brief at	
5	3-5. See also Southern Shrimp Alliance v. Louisiana Shrimp Ass'n, 2009 WL	
6	3447259, at *2 (E.D. La. Oct. 20, 2009) (compelling production of confidential	
7	settlement agreements when relevant to the defense, and finding "attorneys' eyes	
8	only" protection sufficient to protect confidentiality interests).	
9	None of P10's cited authority holds to the contrary. P10's heavy reliance on	
10	this Court's unpublished discovery order in Perfect 10 v. Net Management Services,	
11	C.D. Cal. Case No. CV 02-3735 LGB (SHx), is misplaced. There, the Court denied a	
12	motion to compel a confidential settlement agreement in a RICO case because the	
13	"settlement documents ha[d] no relevance to Perfect 10's claims" and "no relevance	
14	to the measure of damages." By contrast, the Microsoft settlement agreement is	
15	relevant to P10's claims and alleged damages in the Google and Amazon cases.	
16		
17	DATED: February 4, 2010 Respectfully submitted,	
18	QUINN EMANUEL URQUHART OLIVER &	
19	HEDGES, LLP	
20		
21	By Rachel Henick Lassobian	
22	Rachel Herrick Kassabian Attorneys for Defendant GOOGLE INC.	
23	Automoys for Defendant GOOGLE inte.	
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25	determining his basis for its calculation of damages. Summarily stating the figures is not sufficient."). Moreover, the amount alone, without the accompanying license terms explaining what was being licensed for that dollar figure, is plainly insufficient for damages discovery purposes.	
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01980.51320/3306323.2	-3- GOOGLE INC.'S NOTICE OF JOINDER IN THE AMAZON DEFENDANTS' MOTION TO COMPEL	
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