

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
 Michael T. Zeller (Bar No. 196417)
 2 michaelzeller@quinnemanuel.com
 865 South Figueroa Street, 10th Floor
 3 Los Angeles, California 90017-2543
 Telephone: (213) 443-3000
 4 Facsimile: (213) 443-3100
 Charles K. Verhoeven (Bar No. 170151)
 5 charlesverhoeven@quinnemanuel.com
 50 California Street, 22nd Floor
 6 San Francisco, California 94111
 Rachel Herrick Kassabian (Bar No. 191060)
 7 rachelkassabian@quinnemanuel.com
 555 Twin Dolphin Drive, 5th Floor
 8 Redwood Shores, California 94065
 9 Attorneys for Defendant GOOGLE INC.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California
 14 corporation,
 15 Plaintiff,

16 vs.

17 GOOGLE INC., a corporation; and
 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

**GOOGLE INC.'S NOTICE OF
 JOINDER IN THE AMAZON
 DEFENDANTS' MOTION TO
 COMPEL PRODUCTION OF THE
 MICROSOFT SETTLEMENT
 AGREEMENT**

19 AND COUNTERCLAIM

Hon. Stephen J. Hillman

20 PERFECT 10, INC., a California
 21 corporation,
 22 Plaintiff,

23 vs.

24 AMAZON.COM, INC., a corporation;
 A9.COM, INC., a corporation; and
 25 DOES 1 through 100, inclusive,
 26 Defendants.

Date: February 16, 2010
 Time: 2:00 p.m.
 Crtrm.: 550

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

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

3 PLEASE TAKE NOTICE that Defendant Google Inc. hereby joins in the
4 Amazon Defendants' Motion to Compel Production of the Microsoft Settlement
5 Agreement, filed January 20, 2010 (Dkt. No. 364 in the consolidated case), set for
6 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
12 Production) and B (P10's Response). And like the Amazon Defendants, Google has
13 meet-and-conferred with P10 repeatedly—and unsuccessfully—seeking production of
14 this document. Id. at Exh. C (meet-and-confer correspondence). Since both Amazon
15 and Google seek production of this same document, in order to conserve the Court's
16 valuable resources, Google now joins in the Amazon Defendants' motion for an order
17 compelling production of this document.

18 The Amazon Defendants have explained that this document is relevant to
19 several issues in the *Amazon* case. See Joint Stipulation on Motion to Compel ("Joint
20 Stipulation") (Dkt. No. 364 in the consolidated case).¹ Specifically, the Amazon
21 Defendants argue that "the agreement is potentially highly relevant to issues of
22 liability and damages, and certainly is reasonably likely to lead to the discovery of
23

24
25 ¹ To avoid burdening the Court with repetitive briefing, Google hereby
26 incorporates by reference the relevant portions of both this Joint Stipulation (Dkt. No.
27 364 in the consolidated case) and the Amazon Defendants' Supplemental Brief in
28 support of its Motion to Compel ("Amazon's Supplemental Brief") (Dkt. No. 370 in
the consolidated case).

1 admissible evidence [on those issues],” and that the agreement “would provide one
2 measure of the value of Perfect 10’s copyrighted works.” Id. at 7, 12.

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

24
25 ² Further, to the extent P10 claims it need not disclose the settlement *agreement*
26 because it has disclosed the settlement *amount*, that argument fails. See Fryer v.
27 Brown, 2005 WL 1677940, at *6 (W.D. Wash. Jul. 15, 2005) (“Plaintiff is also
28 instructed to provide Defendant with the sources of documents Plaintiff used in
(footnote continued)

