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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 PERFECT 10, INC., a California
 13 corporation,

14 Plaintiff,

15 v.

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

18 Defendant.

Case No. CV 04-9484 AHM (SHx)

Before Judge A. Howard Matz

**RESPONSE OF PLAINTIFF
 PERFECT 10, INC. TO DEFENDANT
 GOOGLE INC.'S EVIDENTIARY
 OBJECTIONS TO THE
 DECLARATION OF MELANIE
 POBLETE RE: PERFECT 10'S
 MOTION FOR PRELIMINARY
 INJUNCTION AGAINST GOOGLE**

Date: April 5, 2010
 Time: 10:00 a.m.
 Place: Courtroom 14, Courtroom of
 Judge A. Howard Matz

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

1 Plaintiff Perfect 10, Inc. (“Perfect 10”) hereby responds to Defendant
2 Google Inc.’s (“Google”) Evidentiary Objections to the Declaration of Melanie
3 Poblete submitted by Perfect 10 in connection with Perfect 10’s Motion for
4 Preliminary Injunction Against Defendant Google, Inc. (the “Poblete
5 Declaration”) (Docket 775) as follows:

6 **I. PERFECT 10’S “SAMPLE” OF IMAGES FROM ITS DMCA**
7 **NOTICES IS RELEVANT TO CLAIMS IN PERFECT 10’S**
8 **MOTION FOR PRELIMINARY INJUNCTION.**

9 Google’s primary objection to the Poblete Declaration is that the
10 declaration is irrelevant because it discusses the “Sample” of Perfect 10 images
11 included in Exhibit 9 to the Declaration of Dr. Norman Zada, submitted by
12 Perfect 10 in support of Perfect 10’s Motion for Preliminary Injunction Against
13 Defendant Google, Inc. (the “Zada Declaration”), Docket 790. In order to
14 simplify the motion and save time and the Court’s resources, Perfect 10 selected
15 a sample of 12 images from its full image library (the “Sample”). The Court
16 has favored a sampling approach with regard to Perfect 10’s images. *See*
17 December 2, 2008 Order Setting Status Conference Re Case Management,
18 *Perfect 10 v. Microsoft, Inc.*, Case No. 07-5156 AHM (SHx), Docket No. 51.

19 However, Perfect 10 also submitted evidence of copyrights for all of the
20 images in all of Perfect 10’s magazines and for its website, perfect10.com. The
21 United States Copyright Registration Certificates submitted by Perfect 10 cover
22 tens of thousands of images, and are prima facie evidence of ownership of the
23 copyrights. *See, e.g., Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 F.Supp.
24 2d 1146, 1166-67 (C.D. Cal. 2002):

25 [T]he Court finds that Perfect 10 is entitled to treat the copyright
26 registrations as prima facie evidence that the individual pictures are
27 copyrighted. ... The Court concludes this is sufficient to raise the
28 presumption of validity, particularly where Cybernet has made no

1 sustained argument to the contrary. Perfect 10 has shown a strong
2 likelihood that it owns a valid copyright in the identified images.
3 *See also Perfect 10 v. Google, Inc.*, 416 F.Supp.2d 828, 832 (C.D.Cal. 2006)
4 (“P10 has obtained registered copyrights for its photographs from the United
5 States Copyright Office.”), *aff’d in part and reversed in part on other grounds*,
6 *Perfect 10, Inc. v. Google.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007); *Michaels*
7 *v. Internet Entertainment Group, Inc.*, 5 F.Supp. 2d 823, 830 (1998)
8 (“Registration certificates are prima facie evidence that the plaintiff owns a
9 valid copyright. 17 U.S.C. § 410(c). Presentation of the certificates shifts the
10 burden to the defendants to overcome the presumption of validity.”)

11 Exhibit 9 to the Zada Declaration (Docket 790, a disk), contains the
12 Copyright Registration Certificates from the United States Copyright Office and
13 deposit materials for the 12 images in The Sample. Eleven images are
14 contained in 10 issues of Perfect 10 Magazine and the image of Amy Weber is
15 contained in a Group Registration. Both the deposit materials for those
16 registrations and the copyright certificates for those registrations are contained
17 in Exhibit 9, in the folder labeled “The Sample.” The deposit materials for 11
18 of the sample images consisted of 10 complete copies of Perfect 10 Magazine,
19 which are contained in Exhibit 9, and which covered hundreds of other P10
20 Images, many of which were attached to the Zada Declaration as having been
21 infringed. Google has not contested the copyrights for those 12 sample images,
22 or for any of the other hundreds of images in those issues of the magazine.
23 Exhibit 9 to the Zada Declaration also contained other Copyright Registration
24 Certificates from the United States Copyright Office in “The Sample” folder in
25 a sub-folder labeled “Other Copyright Certificates.” Those other certificates
26 were for all of the other issues of Perfect 10 Magazine, as well as the last
27 registration of Perfect 10’s website, and at least 50 other registrations. Most if
28 not all of the P10 Images mentioned in the Zada Declaration are covered by

1 those copyrights. Furthermore, Exhibit 86 to the Zada Reply Declaration (a
2 hard drive) contains a folder entitled “Deposit Materials.” That folder contains
3 true and correct copies of all Deposit Materials for all Perfect 10 Magazine
4 issues, and for the last registration of the perfect10.com website, that were not
5 previously included in Exhibit 9 to the Zada Declaration. *See* Zada Reply
6 Declaration (Docket No. 826) ¶6.

7 *See also* Mausner Reply Declaration (Docket No. 820), ¶3:

8 Contained on Exhibit 9 to the Declaration of Dr. Norman
9 Zada in support of Perfect 10’s PI Motion (Docket No. 790) (the
10 “Zada Declaration”), and on the hard drive submitted as Exhibit 86
11 with the Reply Declaration of Dr. Norman Zada in support of
12 Perfect 10’s PI Motion, submitted concurrently herewith, are true
13 and correct copies of all United States Copyright Registration
14 Certificates and all deposit materials for all Perfect 10 Magazine
15 issues, and for the last registration of the perfect10.com website. I
16 submitted all of these copyright applications to the United States
17 Copyright Office, and the Copyright Office granted the
18 applications and issued those Copyright Registration Certificates.

19 The statements made in the Poblete Declaration regarding the Sample images
20 are relevant and are a part of the proof regarding Perfect 10’s ownership of the
21 copyrights. For example, the Poblete declaration states which Copyright
22 Registration Certificate covers each of the images in the Sample. Ms. Poblete’s
23 declaration is meant to make it easier for the Court to see that Perfect 10 owns
24 the copyright for each of the images in the sample. For example, she states:

25 4. Page 1 of Exhibit 28 to the Zada Declaration contains an
26 image of Anna Tarson that appears in Perfect 10 Magazine, Vol. 5,
27 No. 2, and has been registered at the Copyright Office under
28 Registration No. TX 5-452-254. That image also appears on Page 2

1 of Exhibit 64.

2 5. Page 3 of Exhibit 45 to the Zada Declaration contains an
3 image of Ashley Degenford that appears in Perfect 10 Magazine,
4 Vol. 1, No. 5, and has been registered at the Copyright Office
5 under Registration No. TX 4-556-475. This image also appears on
6 Pages 1-2 of Exhibit 45.

7 Etc. Google's objections to this is merely frivolous boilerplate, consistent with
8 its policy of objecting to everything and making everything as difficult as
9 possible. Google has submitted no evidence to refute the testimony of Ms.
10 Poblete, Dr. Zada, Mr. Mausner, or the Copyright Certificates themselves, that
11 Perfect 10's copyrights are valid.

12 **II. THE POBLETE DECLARATION IS OTHERWISE ADMISSIBLE.**

13 Google's remaining objections to the Poblete Declaration lack merit.
14 The Poblete Declaration deals mainly with the registration certificates and
15 deposit materials for the 12 sample images referenced in the Zada Declaration.
16 Ms. Poblete is an experienced legal assistant with extensive knowledge of the
17 images, copyright registrations, and deposit materials relevant to Perfect 10's
18 copyright infringement claims. She personally examined all the images and
19 deposit materials referenced in her declaration. Poblete Decl. ¶¶1-15.
20 Therefore, Ms. Poblete's testimony regarding the images, certificates, and
21 deposit materials is based upon her personal knowledge. Furthermore, based
22 upon her legal experience, Ms. Poblete unquestionably is qualified to examine
23 Copyright Office materials and testify about the documents she reviewed.
24 Finally, the documents referenced in the Poblete Declaration were provided to
25 the Court and all parties as exhibits to the PI Motion.

26 **III. PERFECT 10'S RESPONSES TO GOOGLE'S SPECIFIC**
27 **OBJECTIONS.**

28 As explained below, this Court should disregard Google's specific

1 objections to the Poblete Declaration:
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<u>Proffered Evidence & Objection</u>	<u>Perfect 10's Response</u>
<p>3 4 1. Poblete Decl., at ¶ 2 ("I have 5 verified that Perfect 10 has in its 6 deposit material for copyright 7 registrations filed with the U.S. 8 Copyright Office, over 45,000 unique 9 images.") 10 <u>Fed. R. Evid. 401, 403, 602, 1002</u> 11 The statement is irrelevant, 12 conclusory, lacks foundation, and does 13 not appear to be within the witness's 14 personal knowledge. The statement also violates the Best Evidence Rule, because copies of the deposit material for P10's copyright registrations (which P10 claims to have records of) are the best evidence of the contents of those deposit materials.</p>	<p>As explained above, Ms. Poblete's statement is based upon her personal knowledge and has sufficient foundation, based upon her years of working as a legal assistant on this lawsuit and with Perfect 10's copyrights. Additionally, Google implies that the deposit materials have not been submitted. However, the deposit materials have been submitted in Exhibit 9 (the disk) and Exhibit 86 (the hard drive), so there is no basis for this objection.</p>

15 **IV. CONCLUSION.**

16 For the foregoing reasons, this Court should disregard Google's
17 evidentiary objections and consider the Declaration of Melanie Poblete in its
18 entirety.

19 Dated: March 28, 2010

Respectfully submitted,
LAW OFFICES OF JEFFREY N. MAUSNER

21 By: Jeffrey N. Mausner

22 Jeffrey N. Mausner
23 Attorney for Plaintiff Perfect 10, Inc.
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