

1 Jeffrey N. Mausner (State Bar No. 122385)
 2 Law Offices of Jeffrey N. Mausner
 3 Warner Center Towers
 4 21800 Oxnard Street, Suite 910
 5 Woodland Hills, California 91367
 6 Email: Jeff@mausnerlaw.com
 7 Telephone: (310) 617-8100, (818) 992-7500
 8 Facsimile: (818) 716-2773

9 Attorneys for Plaintiff Perfect 10, Inc.

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,

17 Defendants.

Case No. CV 04-9484 AHM (SHx)

Before Judge Stephen J. Hillman

**PERFECT 10'S REPLY RE SECOND
 STATUS REPORT REGARDING
 COURT-ORDERED MEET AND
 CONFER; REQUEST FOR FURTHER
 HEARING REGARDING
 DOCUMENTS THAT GOOGLE HAS
 NOT PRODUCED**

Date: None set

Time: None set

Place: Courtroom 550, Courtroom of the
 Honorable Stephen J. Hillman

Discovery Cut-Off Date: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

1 Google's Response to Perfect 10's Second Status Report Regarding Court-
2 Ordered Meet and Confer ("Google's Response") contains several demonstrably
3 incorrect statements:

4 (1) Incorrect statement: "P10 refused to telephonically meet and confer with
5 Google when Google's counsel was available." (Google's Response, p. 1, ln. 14-15):

6 The email from Google's counsel stated: "Jeff, I am available for a call on
7 February 26 at 3pm, or March 4 at 10am." (Exhibit 1 to Mausner Decl., Docket No.
8 851-2, page 9.) The response from Perfect 10's counsel stated: "Hi Rachel. I've
9 been tied up with the Amazon settlement, so I guess we should do March 4 at 10
10 A.M." (*Id.* page 10.) There was no refusal by Perfect 10 to telephonically meet and
11 confer; the March 4 date was agreed to. Google then cancelled the March 4 date.
12 (*Id.* pages 12-15.)

13
14 (2) Incorrect statement: "For more than seven weeks, P10 has refused to
15 meaningfully respond to Google's detailed written offer of compromise." (Google's
16 Response, page 1 lines 16-17.)

17 Perfect 10 first tried to get Google to telephonically discuss its February 16
18 offer:

19 *See* February 17 email from Perfect 10 to Google: "Rachel: Please let me
20 know when you are available for a telephone conference regarding this matter.
21 We are available at the following times: February 23 in the afternoon;
22 February 24 all day; February 25 all day; February 26 all day. /s/ Jeff."

23 When a telephone conference did not take place (Exhibit 1 to Mausner Decl., pages
24 9-15), Perfect 10, in a further attempt to telephonically meet and confer, stated its
25 position regarding Google's offer, in writing, several times:

26 March 5, 2010 email from Perfect 10 to Google: "Google should have
27 already produced these documents months or years ago. Perfect 10 will not
28 accept Google's 'compromise.' ... They are all highly relevant. Perfect 10 will

1 not forego production of some of the documents to get others.” (Exhibit 1 to
2 Mausner Decl., page 17.)

3 April 5, 2010 email from Perfect 10 to Google: “Judge Hillman
4 ordered the parties to meet and confer. It is clear from the hearing that he
5 meant by telephone. You have not complied with that order. We have
6 corresponded with you for months about this. We will discuss your February
7 16 letter, and everything else, in our telephone call, but we are not going to
8 send any more letters or emails. Your February 16 offer, that we can only get
9 some of the documents by agreeing to give up our right to get other
10 documents, is not acceptable. We want to finish the meet and confer by
11 telephone.” (*Id.* page 27.)

12
13 (3) Incorrect statement: “completion of the meet and confer process, ... has
14 been delayed through no fault of Google’s.” (Google’s Response, page 6, lines 4-5.)

15 Google has refused to telephonically meet and confer with Perfect 10 for
16 almost three months:

17 January 17, 2010 email from P10 to Google: “***Rachel, please let***
18 ***me know what times you are available in the coming week to discuss***
19 ***production of the documents that have not been produced by Google, as***
20 ***discussed in the hearing on Friday.***” (Exhibit 2 to Mausner Declaration,
21 Docket No. 851-3, page 1, emphasis added.)

22 January 19, 2010 email from P10 to Google: “Rachel, Brad, or
23 Tom: Please respond to the email [above]. Thanks, Jeff.” (*Id.* page 2.)

24 January 22, 2010 email from P10 to Google: “***Please give me times***
25 ***next week when you are available to discuss these matters.***” (*Id.* page 5,
26 emphasis added.)

27 January 25, 2010 email from P10 to Google: “Rachel, I disagree
28 with your comments below regarding the documents. I think at this point

1 we should set up the conference call with Judge Hillman.” (*Id.* page 8.)

2 January 26, 2010 email from P10 to Google: “Rachel, these
3 documents are directly relevant to pending summary judgment motions
4 before Judge Matz. Judge Hillman said that we should try to resolve this
5 over the next week or so, and if we couldn’t, he could do so in a telephone
6 conference.” (*Id.* page 10.)

7 January 27, 2010 email from P10 to Google: “Attached please find
8 Judge Hillman's Order of today. ***I am available to meet and confer by
9 telephone on any of the following dates: January 28, 29, 30, 31,
10 February 1, 2, or 3. Please let me know when you are available to
11 conduct the telephone meet and confer.*** Thanks, Jeff.” (*Id.* at page 11,
12 emphasis added.)

13 January 29, 2010 email from P10 to Google: “***Rachel, I don’t
14 understand the delay in agreeing to telephonically meet and confer
15 regarding these documents, which are directly relevant to the pending
16 summary judgment motions. Judge Hillman pointed out that the issues
17 are not complicated, and originally contemplated that the meet and
18 confer would take place last week. Please provide a date and time next
19 week for a telephonic meet and confer regarding these documents.***” (*Id.*
20 page 13, emphasis added.)

21 February 2, 2010 email from P10 to Google: “***Rachel ... We had
22 the hearing before Judge Hillman regarding the documents that Google
23 has not produced 18 days ago. Judge Hillman has ordered the parties to
24 meet and confer regarding those documents. In his January 27 written
25 order, Judge Hillman made clear that the ‘meet and confer regarding
26 Perfect 10's Sanctions Motion [shall take place] as soon as practicable
27 for all counsel, and that the ‘precise issues set forth by Perfect 10 are
28 not complicated.’ Therefore, it is quite clear that Google is acting in***

1 *bad faith.*” (*Id.* page 15, emphasis added.)

2 February 17, 2010 email from P10 to Google: “*Rachel: Please let*
3 *me know when you are available for a telephone conference regarding*
4 *this matter. We are available at the following times: February 23 in the*
5 *afternoon; February 24 all day; February 25 all day; February 26 all*
6 *day. /s/ Jeff.*” (Exhibit 1 to Mausner Decl., Docket No. 851-2, page 8,
7 emphasis added.)

8 March 4, 2010 email from P10 to Google: “*We are prepared to*
9 *proceed with the 1:15 PM phone call. We need to complete the meet*
10 *and confer process now. You have delayed this long enough. The*
11 *phone call will not take long, let's just do it now. I will call Tom at 1:15,*
12 *as scheduled. /s/ Jeff.*” (*Id.* page 13, emphasis added.)

13 March 4, 2010 email from P10 to Google: “*Dr. Zada and I tried to*
14 *call Tom Nolan and you, Rachel, and got voicemail for both of you,*
15 *despite the fact that we had this meet and confer scheduled for 1:15 PM.*
16 It is obvious that you were avoiding my phone call. I left messages for
17 both of you to call me back. Please call me back by 3 P.M. today, or we
18 will proceed accordingly. /s/ Jeff.” (*Id.* page 15, emphasis added.)

19 March 7, 2010 email from P10 to Google: “Judge Hillman ordered
20 the parties to meet-and-confer regarding Google's admitted failure to
21 produce numerous documents, but Google has disregarded that order and
22 instead has responded with numerous delay tactics. Google's claim that it
23 cannot produce the documents by March 19, 2010 is incredible, given that
24 these documents were ordered produced either by Judge Hillman on May
25 22, 2006, or by Judge Matz on May 13, 2008, and all of these documents
26 are the subject of the sanctions motion that was filed in November 2009.”
27 (*Id.* page 19.)

28 April 2, 2010 email from P10 to Google: “*As you know, Judge*

1 *Hillman ordered the parties to meet and confer regarding the documents*
2 *that Google has not produced. When are you going to agree to*
3 *participate in that meet and confer? /s/ Jeff*” (*Id.* page 19, emphasis
4 added.)

5 April 5, 2010 email from P10 to Google: “*Judge Hillman ordered*
6 *the parties to meet and confer. It is clear from the hearing that he*
7 *meant by telephone. You have not complied with that order. We have*
8 *corresponded with you for months about this. We will discuss your*
9 *February 16 letter, and everything else, in our telephone call, but we are*
10 *not going to send any more letters or emails. Your February 16 offer,*
11 *that we can only get some of the documents by agreeing to give up our*
12 *right to get other documents, is not acceptable. We want to finish the*
13 *meet and confer, by telephone. Are you or are you not going to talk with*
14 *us by telephone. If yes, give me dates during the next two weeks when*
15 *you will do so. If no, say so now.*” (*Id.* page 27, emphasis added.)
16

17 It should be noted that Judge Matz wanted to know what was going on in
18 regard to these documents, and specifically asked about them at the April 5, 2010
19 hearing. His written questions to Perfect 10 included the following: “What is the
20 status of your discovery disputes over obtaining DMCA notices?” (April 5, 2010
21 Minute Order, Docket No. 850, page 4.)

22 Dated: April 9, 2010

Respectfully submitted,
LAW OFFICES OF JEFFREY N. MAUSNER

24 By: Jeffrey N. Mausner
25 Jeffrey N. Mausner
26 Attorney for Plaintiff Perfect 10, Inc.
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