

1 QUINN EMANUEL URQUHART & SULLIVAN, 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
Attorneys for Defendant GOOGLE INC.
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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 PERFECT 10, INC., a California
corporation,

14 *Plaintiff,*

15 vs.

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

18 *Defendants.*

19 AND COUNTERCLAIM
20

CASE NO. CV 04-9484 AHM (SHx)

DISCOVERY MATTER

**DEFENDANT GOOGLE INC'S EX
PARTE APPLICATION FOR (1)
STAY OF THE COURT'S JUNE 16,
2010 ORDER AND (2) RELIEF
FROM THE TEN-DAY
REQUIREMENT OF LOCAL RULE
7-3**

[Declaration of Andrea Pallios Roberts,
and (Proposed) Order filed
concurrently]

Hon. Stephen J. Hillman

Date: None Set
Time: None Set
Crtrm.: 550

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

1 Pursuant to the Federal Rules of Civil Procedure and Local Rule 7-19,
2 Defendant Google Inc. ("Google") respectfully submits this *ex parte* application
3 seeking (1) a stay of the Court's June 16, 2010 Order Re Plaintiff Perfect 10's
4 Motion for Evidentiary Sanctions ("the Order") and (2) relief from the ten-day
5 requirement of Local Rule 7-3.

6 Google makes these requests through an *ex parte* application because the
7 current deadline for compliance with the Order is in three business days and events
8 which triggered Google's need for a stay (as described in the Memorandum of
9 Points and Authorities) occurred within the past three business days. More
10 specifically, (1) on June 26, 2010, plaintiff Perfect 10, Inc. ("P10") notified Google
11 that it will be filing with Judge Matz objections to the Order, thereby creating
12 uncertainty as to what documents (if any) Google ultimately will be required to
13 produce in connection with the Order, (2) several of Google's in-house and outside
14 legal personnel are away on previously-scheduled vacations due to the
15 Independence Day holiday, (3) on June 28, 2010, the Court ordered the parties to
16 continue meeting and conferring regarding certain aspects of the Order pertaining to
17 production format issues, and those meet and confer activities will not be complete
18 until after the supplemental production deadline specified in the Order due to the
19 above-referenced vacations, and (4) given the volume of documents which must be
20 searched and reviewed, it will be impossible for Google to complete its
21 supplemental production by the deadline specified in the Order. Accordingly,
22 Google requests that the deadline specified in the Order be stayed pending Judge
23 Matz's ruling on P10's objections to the Order.

24 Pursuant to Local Rule 7-19, on June 29, 2010, Google gave notice of this *ex*
25 *parte* application to Jeffrey N. Mausner of The Law Offices of Jeffrey N. Mausner
26 (address: 21800 Oxnard Street, Suite 910, Woodland Hills, California 91367,
27 telephone: (818) 992-7500), counsel of record for P10, who informed Google that
28

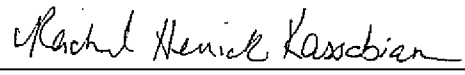
1 P10 intends to oppose this *ex parte* application. Declaration of Andrea Pallios
2 Roberts ("Roberts Decl.") ¶ 8, Ex. A..

3 This application is based on this Application and the accompanying
4 Memorandum, the Declaration of Andrea Pallios Roberts filed concurrently, the
5 pleadings and other papers on file in this action, and all matters of which the Court
6 may take judicial notice.

7 DATED: June 30, 2010

QUINN EMANUEL URQUHART &
SULIVAN. LLP

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By 
Rachel Herrick Kassabian
Attorneys for Defendant GOOGLE INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Google respectfully requests that this Court stay the portions of the Court's
3 June 16, 2010 Order that require Google to supplement its document production in
4 various respects by July 6, 2010, for the reasons set forth below.

5 **Background**

6 On June 16, 2010, this Court issued an order ("Order") denying P10's Motion
7 for Evidentiary and Other Sanctions. See June 16, 2010 Order denying Plaintiff
8 Perfect 10's Motion for Evidentiary Sanctions (Dkt. No. 896). Specifically, the
9 Order denied P10's request for sanctions in its entirety, finding that Google had
10 complied with all relevant discovery orders and produced all requested documents.
11 Id. at pp. 1-2. With respect to P10's alternate requested relief, the Court directed
12 that Google supplement its production of certain categories of documents within 20
13 days of the Order (i.e. by July 6, 2010), to bring its prior production current up to
14 the present time.¹

15 Promptly upon issuance of the Order, Google began taking steps to comply
16 with the Order, including investigating how long it would take to search for, review
17 and produce the categories of documents designated for supplemental production in

18 _____
19 ¹ Among other things, the Court ordered Google to locate and produce
20 additional notices of termination issued by Google as a result of alleged intellectual
21 property violations on Web Search, Image Search and AdSense (Request Nos. 26-
22 28), communications between Google and the owners of 82 websites identified by
23 P10, to the extent that ownership information is reflected in Google's records
24 (Request No. 29), and "reports, studies, or internal memoranda ordered, requested,
25 or circulated by Bob Brougher, Susan Wojcicki, Walt Drummond, Eric Schmidt,
26 John Levine, Heraldo Botelho, Radhika Malpani, Jessie Jiang, Lawrence You,
27 Diane Tang, and Alexander MacGillivray relating to the following topics: search
28 query frequencies, search query frequencies for adult-related terms, number of
clicks on adult images and images in general, traffic to infringing websites, the draw
of adult content, and percentage of searches conducted with the safe search filter
off" (Request Nos. 128-131 & 194-195). See Order at p. 2 (citing Google's
Statement Re Status of DMCA-Related Discovery Issues (Dkt. No. 885), at pp. 4-6).

1 the Order, in light of the volume of documents and files that must be searched and
2 reviewed, and the pre-scheduled Independence Day vacations of certain key Google
3 and outside counsel personnel. Roberts Decl. ¶¶ 2-3. Based upon its current
4 information, Google estimates that it will take a minimum of six to eight weeks to
5 complete this supplemental production. Id. ¶ 5.

6 On Saturday, June 26, 2010, P10 informed Google that it intends to file
7 objections to the Order. Roberts Decl. ¶ 6. While the precise bases for P10's
8 objections are not clear, it appears that P10 intends to seek additional and/or
9 alternative document production than what the Court ordered. E.g., id. ("Perfect 10
10 was entitled to all [third-party DMCA] notices that were sent to Google.")²

11 During a telephonic hearing on June 28, 2010, the Court ordered the parties to
12 further meet and confer regarding certain aspects of the Order pertaining to
13 production format issues. Roberts Decl. ¶ 7. The parties will be unable to complete
14 those meet and confer activities until after the July 6 supplemental production
15 deadline specified in the Order, due to the above-referenced vacations of certain key
16 Google personnel.

17 On June 29, 2010, Google requested that P10 agree to a stay of the Order's
18 July 6 deadline for supplemental production during the pendency of P10's
19 objections to that Order, for all of the above-referenced reasons. Roberts Decl. ¶ 8,
20 Ex. A. P10 refused to stipulate to Google's requested stay. Instead, P10 demanded
21 that Google effectively concede the merits of the objections P10 intends to make to
22 the Order by agreeing to produce the categories of documents the Court had found
23 that P10 had never even requested, in exchange for a 24-day extension. This *ex*
24 *parte* application followed. Id.

25
26 ² Pursuant to the parties' stipulation and Judge Matz's Order thereon (Dkt. No.
27 916), P10's planned objections will be filed on July 12, 2010, and heard by Judge
28 Matz on August 16, 2010.

1 Argument

2 **I. GOOGLE SHOULD BE GRANTED A STAY OF THE JULY 6, 2010**
3 **DEADLINE FOR ITS SUPPLEMENTAL PRODUCTION.**

4 Google respectfully requests that the Court stay the July 6, 2010 deadline for
5 Google's supplemental production imposed by the Order during the pendency of
6 P10's appeal of that Order to Judge Matz, for three reasons.

7 First, P10's planned objections create uncertainty as to what document
8 production (if any) ultimately might be required in connection with P10's Motion
9 for Evidentiary and Other Sanctions. (Dkt. No. 617). Once the parties have Judge
10 Matz's order on P10's objections, Google will know with certainty the scope of any
11 necessary production, which will allow Google to avoid potentially duplicative or
12 wasted production costs, repetitive custodian document pulls, and the like.
13 Discovery orders are routinely stayed pending appeal for this very reason.

14 Second, based upon its investigation into how long it will take to search for,
15 review and make a supplemental production of the categories of documents
16 referenced on the Order, Google has determined that completing the production by
17 the current July 6 deadline will be impossible. For example, one of the referenced
18 categories, P10's Requests for Production Nos. 128-131 and 194-195, requires
19 Google to search a massive volume of documents—the entire custodial files of each
20 of the ten custodians named in the requests. Google must then convert and de-
21 duplicate the documents, manually review them for responsiveness and privilege,
22 and process any responsive documents for electronic production. Roberts Decl. ¶ 4.
23 By way of comparison, Google's prior search for documents responsive to these
24 same requests in 2008 involved the review of millions of documents and required
25 more than three *months* to complete. Id. This supplemental production will require
26 a similarly burdensome undertaking, which Google estimates will take a minimum
27 of six to eight weeks to complete. Id. ¶ 5. This will roughly coincide with the
28 hearing date on P10's objections to the Order, currently set for August 16, 2010.

1 See June 29, 2010 Order by Judge Matz setting hearing date pursuant to parties'
2 stipulation (Dkt. No. 916).

3 This supplemental document production effort is further complicated by the
4 fact that several key Google and outside counsel personnel are currently (or about to
5 be) out of the office on pre-scheduled Independence Day vacations. Roberts Decl. ¶
6 3. While Google has assigned additional legal personnel to assist with this
7 supplemental production, Google will still need substantial additional time to
8 complete it. Id.

9 Third, on June 28, 2010, the Court ordered the parties to further meet and
10 confer regarding certain aspects of the Order pertaining to production format issues.
11 Roberts Decl. ¶ 7. The parties will be unable to complete those meet and confer
12 activities until after the July 6 deadline specified in the Order, due to the above-
13 referenced vacations of certain key personnel, including Google in-house counsel
14 who must approve any discovery agreements the parties reach. Thus, Google will
15 not know with certainty prior to the July 6 deadline precisely which documents (and
16 in what format) need to be produced.³

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19
20 ³ For these same reasons, Google should be given relief from Local Rule 7-3's
21 requirement that the parties meet and confer ten days prior to the filing of this
22 application, to the extent it applies here. Google's deadline to comply with the
23 Order is on July 6, just three business days from the date of this filing, so Google
24 does not have ten days to wait after the meet and confer. P10 also only notified
25 Google of its intention to file objections to the Order on June 26, six business days
26 before the July 6 production deadline. Furthermore, before coming to this Court for
27 relief, Google made a good-faith attempt to determine whether supplementing its
28 production by July 6 would be feasible, which investigation took several days to
complete. Stated another way, it is because Google tried to meet the Court's
deadline before requesting an extension that Google does not have ten days to wait
after meet and confer.

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Conclusion

Accordingly, Google respectfully requests that the Court (1) stay the July 6, 2010 deadline for Google's supplemental production set in the June 16, 2010 Order, pending Judge Matz's ruling on P10's objections to that Order and (2) grant Google relief from the requirements of Local Rule 7-3.

DATED: June 30, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By *Rachel Herrick Kassabian*
Rachel Herrick Kassabian
Attorneys for Defendant GOOGLE INC.