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9 Attorneys for Defendant GOOGLE INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

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

15 *Plaintiff,*

16 vs.

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

19 *Defendants.*

20 AND COUNTERCLAIM

CASE NO. CV 04-9484 AHM (SHx)

DISCOVERY MATTER

**DECLARATION OF ANDREA
PALLIOS ROBERTS IN SUPPORT
OF GOOGLE'S EX PARTE
APPLICATION FOR (1) RELIEF
FROM THE TEN-DAY
REQUIREMENT OF LOCAL RULE
7-3; AND (2) A STAY OF THE
COURT'S JUNE 16, 2010 ORDER**

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 I, Andrea Pallios Roberts, declare as follows:

2 1. I am a member of the bar of the State of California and an associate at
3 Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Defendant Google Inc.
4 (“Google”) in this action. Unless otherwise stated, I make this declaration of my
5 personal and firsthand knowledge, and if called and sworn as a witness, I could and
6 would testify competently thereto.

7 2. Shortly after receiving the Court’s June 16, 2010 Order denying
8 Plaintiff Perfect 10, Inc.’s (“P10”) Motion for Evidentiary and Other Sanctions (“the
9 Order”), Google began working diligently to comply with the alternative relief
10 provided in that Order, including by commencing to gather and review documents
11 for Google’s supplemental production, and taking steps to determine how long it
12 will take to search for, review and prepare the entire supplemental document
13 production specified in the Order.

14 3. Several in-house and outside legal personnel critical to Google’s
15 supplemental document production effort had pre-planned vacations scheduled
16 during the week before and/or the week after Independence Day, including the in-
17 house counsel overseeing this case and the in-house legal assistant overseeing the
18 document gathering effort. While Google has assigned additional legal personnel to
19 assist with this supplemental production effort, Google will still need substantial
20 additional time to complete it.

21 4. For example, one of the referenced document categories ordered to be
22 supplemented, P10’s Requests for Production Nos. 128-131 and 194-195, requires
23 Google to search a massive volume of documents—the entire custodial files of each
24 of the ten custodians named in the requests. Google must then convert and de-
25 duplicate the documents, manually review them for responsiveness and privilege,
26 and process any responsive documents for electronic production. By way of
27 comparison, Google’s prior search for documents responsive to these same requests
28

1 in 2008 involved the review of millions of documents (over 400 gigabytes of
2 electronic files, to be precise) and required more than three months to complete.

3 5. This supplemental production will require a similarly burdensome
4 undertaking. Based on our prior experience with pulling, searching, reviewing and
5 producing documents in the same categories as those specified in the Order
6 (including the production referenced in paragraph 4 above), we estimate that it will
7 take approximately six to eight weeks (and possibly longer) for Google to complete
8 the work necessary to supplement its production as the Court has ordered, even with
9 the assistance of the additional legal staffing Google has assigned to this project.

10 6. On Saturday, June 26, 2010, Jeffrey Mausner, counsel of record for
11 P10, emailed me (and other counsel for Google) to inform Google that P10 intended
12 to file objections to the Order. Mr. Mausner's email stated that P10 believed the
13 Order was "clearly erroneous," and listed several instances of what P10 believed
14 were "clearly erroneous findings of fact." The email did not indicate what specific
15 changes to the Order P10 would seek with its objections, but it did list several
16 categories of documents it claims Google was obliged to (but did not) produce,
17 which P10 apparently will request from Judge Matz in its objections. For example,
18 Mr. Mausner stated that "Perfect 10 was entitled to all [third-party DMCA] notices
19 that were sent to Google."

20 7. I am informed that during the June 28, 2010 telephonic hearing on an
21 unrelated Google discovery motion, P10 raised an issue referenced but not decided
22 in the Order, namely, whether Google should be required to re-produce in Excel
23 format the DMCA processing spreadsheets Google had already produced to P10. I
24 am informed that the Court directed the parties to continue to meet and confer
25 regarding this issue, and to bring the issue to the Court's attention if they reached an
26 impasse in those negotiations. Given that certain key Google personnel who must
27 approve any discovery agreements are currently on vacation (as referenced above),
28

1 Google anticipates that those negotiations will not conclude until late next week or
2 early the week thereafter.

3 8. On the morning of June 29, 2010, my colleague Rachel Herrick
4 Kassabian emailed Mr. Mausner, requesting that P10 agree to a stay of the Order's
5 July 6 deadline for Google's supplemental production during the pendency of P10's
6 objections to the Order. Ms. Kassabian's email explained the various reasons why a
7 stay was necessary and appropriate, including that despite Google's best efforts, it
8 would be physically impossible for Google to meet the current deadline. The parties
9 exchanged several emails, but ultimately, Mr. Mausner refused to agree to Google's
10 requested stay. Instead, Mr. Mausner demanded several substantive concessions –
11 including that Google agree to produce several categories of documents that the
12 Order found P10 had not even requested – in exchange for a 24-day extension. Ms.
13 Kassabian informed Mr. Mausner that Google would be filing an *ex parte*
14 application seeking the necessary stay of the Order, and Mr. Mausner indicated that
15 P10 would oppose it. A true and correct copy of these meet and confer emails is
16 attached hereto as Exhibit A.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct. Executed June 30, 2010 at Redwood
19 Shores, California.

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21 _____
22 Andrea Pallios Roberts
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