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10 Attorneys for Plaintiff Perfect 10, Inc.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

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

15 Plaintiff,

16 v.

17 GOOGLE INC., a corporation,

18 Defendants.

Case No. CV 04-9484 AHM (SHx)

Before Honorable Stephen J. Hillman

**DECLARATION OF JEFFREY N.
 MAUSNER IN OPPOSITION TO
 DEFENDANT GOOGLE INC.'S *EX*
PARTE APPLICATION TO STAY THIS
 COURT'S JUNE 16, 2010 ORDER**

**[PLAINTIFF PERFECT 10, INC.'S
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN OPPOSITON TO
 DEFENDANT GOOGLE INC.'S *EX*
PARTE APPLICATION TO STAY THIS
 COURT'S JUNE 16, 2010 ORDER
 SUBMITTED SEPARATELY
 HEREWITH]**

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

1 DECLARATION OF JEFFREY N. MAUSNER

2 I, Jeffrey N. Mausner, declare as follows:

3 1. I am a member of the State Bar of California and admitted to practice
4 before this Court. I am counsel of record for Plaintiff Perfect 10, Inc. (“Perfect 10”)
5 in this action. All of the matters stated herein are of my own personal knowledge,
6 except where otherwise stated, and if called as a witness, I could and would testify
7 competently thereto. I make this declaration in opposition to Defendant Google
8 Inc.’s (“Google”) *Ex Parte* Application To Stay This Court’s June 16, 2010 Order
9 (Docket No. 896) (the “June 16 Order” or the “Order”).

10 2. Attached hereto as Exhibit A is a true and correct copy of the Order
11 Approving Stipulation of Extension of Time to File Motion for Review of
12 Nondispositive Ruling of Magistrate Judge Hillman, signed by Judge Matz and filed
13 on June 29, 2010 (Docket No. 916). As may be seen by a review of Exhibit A, the
14 Order signed by Judge Matz extends the time for only Perfect 10, but not Google, to
15 file objections to, and a motion for review of, this Court’s June 16 Order from July
16 1, 2010 until July 12, 2010.

17 3. Attached hereto as Exhibit B are true and correct copies of emails
18 between me and Rachel Herrick Kassabian, counsel for Google, dated June 29,
19 2010. At no time before I received Ms. Kassabian’s email at approximately 8:56
20 a.m. on June 29, 2010 did anyone representing Google ask me, or anyone else
21 representing Perfect 10, to agree to: (i) a stay of the July 6, 2010 deadline for Google
22 to produce documents set forth in this Court’s June 16 Order until after Judge Matz
23 ruled upon Perfect 10’s objections to the Order; or (ii) an extension of time for
24 Google to produce documents it was compelled to produce under the terms of the
25 Order. At no time before June 29, 2010 did anyone representing Google inform me,
26 or anyone else representing Perfect 10, that Google would not be able to produce the
27 documents it was required to produce under the terms of the June 16 Order by the
28 July 6, 2010 deadline set forth in the Order.

1 4. I participated in the June 28, 2010 telephonic hearing before this Court
2 on Google's motion for a protective order with respect to the deposition of Dr. Eric
3 Schmidt. At no point during the course of that hearing did counsel for Google state
4 that Google needed additional time past July 6, 2010 to produce the documents
5 called for by the June 16 Order, even though the Court and the parties discussed
6 issues related to the June 16 Order at the end of the telephonic hearing.

7 5. At no time has counsel for Google sought to meet and confer with me,
8 or anyone else representing Perfect 10, regarding any objections that Google may
9 have to any portions of this Court's June 16 Order.

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct to the best of my knowledge.
12 Executed on July 1, 2010 in Los Angeles County, California.

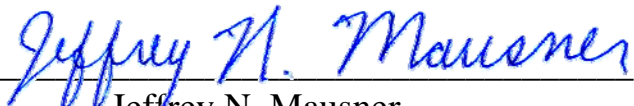
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14 
15 Jeffrey N. Mausner
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Exhibit A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California corporation,

Plaintiff,

vs.

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

Defendants.

CASE NO. CV 04-9484 AHM (SHx)

**ORDER APPROVING
STIPULATION OF EXTENSION
OF TIME TO FILE MOTION FOR
REVIEW OF NONDISPOSITIVE
RULING OF MAGISTRATE
JUDGE HILLMAN**

Court: Hon. A. Howard Matz

AND COUNTERCLAIM

WHEREAS, Magistrate Judge Hillman issued his Order re Plaintiff Perfect 10's Motion for Evidentiary Sanctions on June 16, 2010, which Order was electronically served upon the parties on June 17, 2010 (Docket No. 896);

WHEREAS, under L.R. 72-2.1, the time for Perfect 10 to file a motion for review of Magistrate Judge Hillman's Order is no later than July 1, 2010;

WHEREAS, on June 26, 2010, Perfect 10 informed Google via email that it intends to file objections to and a motion for review of certain aspects of Magistrate Judge Hillman's Order;

///

1 WHEREAS, the parties have mutually agreed to extend the deadline and
2 briefing schedule pertaining to Perfect 10's objections and motion for review of
3 Magistrate Judge Hillman's Order;

4 ACCORDINGLY, PURSUANT TO THE PARTIES' STIPULATION, IT IS
5 HEREBY ORDERS AS FOLLOWS:

6 1. Perfect 10's objections to and motion for review of Magistrate Judge
7 Hillman's Order shall be filed and served on or before July 12, 2010.

8 2. Google's opposition shall be filed and served on or before July 26,
9 2010.

10 3. Perfect 10's reply shall be filed and served on or before August 2,
11 2010.

12 4. The hearing on Perfect 10's objections and motion for review of
13 Magistrate Judge Hillman's Order shall be set for August 16, 2010 at 10:00 a.m.

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15 **IT IS SO ORDERED.**



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18 DATED: June 29, 2010

19 _____
A. Howard Matz

20 United States District Judge
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Exhibit B

Jeffrey N. Mausner

From: Jeffrey Mausner [jeff@mausnerlaw.com]
Sent: Tuesday, June 29, 2010 11:42 PM
To: 'Rachel Herrick Kassabian'
Cc: 'Brad R. Love'; 'Andrea P Roberts'; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Perfect 10 will agree that Google may have up to and including July 30 to produce documents if Google agrees to produce the following by that date:

1. All intellectual property notices, including all notices pertaining to Blogger;
2. All DMCA logs in EXCEL format, including logs pertaining to Blogger;
3. All termination notices, including for Blogger;
4. The remaining documents that Judge Hillman ordered Google to produce in his June 16, 2010 Order.

Acceptance of the above proposal will allow Google to avoid a hearing before Judge Matz in connection with Perfect 10's objections to Judge Hillman's Order, in which Perfect 10 demonstrates just how much material Google has failed to produce.

Regards, Jeff.

From: Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]
Sent: Tuesday, June 29, 2010 10:15 PM
To: 'Jeffrey Mausner'
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Jeff,

While we appreciate the week, it won't be enough, unfortunately. For example, one of the document categories to be supplemented, Request for Production Nos. 128-131 and 194-195, requires Google to search through a massive volume of documents. As you may recall from our discussions back in June 2008, last time we had to search through several hundred gigabytes of files, encompassing literally millions of pages of documents pertaining to the custodians in question. That production took Google approximately three months, and required an extension as well. We estimate the supplemental production on these requests will take 6-8 weeks (which puts us right around the hearing date on P10's Objections).

We might be able to work out an agreement that provides the DMCA processing spreadsheets in excel format, but recall from our January 2010 hearing that doing so will be time consuming as well, since those documents will need to be manually re-reviewed and redacted for privilege in excel format. The bottom line here is that this isn't just a matter of convenience -- we physically cannot complete the supplemental production by July 6 (or July 13), and we need more time. Please let us know whether P10 will reconsider and stipulate to Google's request below. If not, we will proceed with our ex parte application tomorrow.

Regards,
Rachel

From: Jeffrey Mausner [mailto:jeff@mausnerlaw.com]
Sent: Tuesday, June 29, 2010 9:43 PM
To: Rachel Herrick Kassabian
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Hi Rachel. Perfect 10 will agree to a one-week extension, until July 13, 2010, for Google to produce the materials that Judge Hillman ordered produced, as long as Google produces all materials that are in EXCEL format or other electronic format in that native format. That should actually speed the production, because you will not have to convert the documents into another format. I understand that your client contact at Google will be back by that time.

Perfect 10 will oppose an ex parte application seeking relief other than that described above.

Regards, Jeff.

From: Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]
Sent: Tuesday, June 29, 2010 7:35 PM
To: 'Jeffrey Mausner'
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Thanks Jeff. We will need to file an ex parte tomorrow if the parties cannot agree on this, since we want the Court to have sufficient time to consider it before the impending holiday. Please let us know this evening whether (1) P10 will agree to the below request, and (2) if not, whether P10 intends to oppose Google's ex parte.

Regards,

Rachel

From: Jeffrey Mausner [mailto:jeff@mausnerlaw.com]
Sent: Tuesday, June 29, 2010 5:15 PM
To: Rachel Herrick Kassabian
Cc: Brad R. Love; Andrea P Roberts; 'David Schultz'
Subject: RE: Order of Magistrate Judge Hillman

Hi Rachel. I have been tied up with other matters so far today, but will get back to you as soon as I can. Jeff.

From: Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]
Sent: Tuesday, June 29, 2010 5:11 PM
To: 'Jeffrey Mausner'

Cc: Brad R. Love; Andrea P Roberts; David Schultz
Subject: RE: Order of Magistrate Judge Hillman

Jeff,

We have yet to hear from you regarding the request below. Accordingly, please be advised that Google will be seeking ex parte relief from the Court tomorrow, as described below. Please let us know if P10 intends to oppose Google's ex parte application, and if so, on what grounds. Alternatively, if P10 will agree to the requested relief, please advise so that we can avoid burdening the Court with unnecessary motion practice.

Regards,

Rachel

From: Rachel Herrick Kassabian
Sent: Tuesday, June 29, 2010 8:56 AM
To: 'Jeffrey Mausner'
Cc: Brad R. Love; Andrea P Roberts
Subject: Order of Magistrate Judge Hillman

Jeff,

Given P10's intention to file objections to Judge Hillman's June 16th Order with Judge Matz, and the fact that the parties are still meeting and conferring regarding certain document issues (ie spreadsheet format), we suggest that the parties agree to continue the deadlines for supplemental production in that Order pending Judge Matz's ruling on P10's Objections. Once the parties have Judge Matz's order and reach agreement on formatting issues, Google will know with certainty the scope of any necessary production, which will allow us to avoid potentially duplicative or wasted production costs. Additionally, we have investigated the time it will take for Google to search for, review and produce supplemental documents, and confirmed that it will be impossible to complete this supplementation by the current deadline, due to (1) the large volume of materials that must be searched and (2) the pre-planned summer vacations of key Google in-house and outside personnel.

Please let us know by the close of business if P10 will agree to the above.

Regards,

Rachel Herrick Kassabian / Partner
Quinn Emanuel Urquhart & Sullivan LLP
555 Twin Dolphin Drive, Fifth Floor
Redwood Shores, CA 94065
650.801.5005 Direct
650.801.5000 Main
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