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10 Attorneys for Plaintiff Perfect 10, Inc.

11 UNITED STATES DISTRICT COURT
 12
 13 CENTRAL DISTRICT OF CALIFORNIA

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

16 Plaintiff,

17 v.

18 GOOGLE INC., a corporation,

19 Defendants.

Case No.: CV 04-9484 AHM (SHx)

Before Judge A. Howard Matz

**NOTICE SUBMITTING TO THE
 COURT GOOGLE’S RESPONSES AND
 OBJECTIONS TO PERFECT 10’S
 FOURTEENTH SET OF REQUESTS
 FOR THE PRODUCTION OF
 DOCUMENTS, SUBMITTED IN
 CONNECTION WITH PERFECT 10’S
 MOTION FOR REVIEW OF, AND
 OBJECTIONS TO, MAGISTRATE
 JUDGE HILLMAN’S JUNE 16, 2010
 ORDER**

[Declaration of Jeffrey N. Mausner Filed Separately]

Date: Motion Taken Under Submission

Time: N/A

Place: Courtroom 14, Courtroom of the
Honorable 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”) submits this Notice to the Court, in
2 order to alert the Court to Defendant Google Inc.’s Responses and Objections to
3 Plaintiff Perfect 10, Inc.’s Fourteenth Set of Requests for the Production of
4 Documents, which Perfect 10 only received on August 16, 2010 (“Google’s
5 Responses”). A copy of Google’s Responses is attached as Exhibit A to the
6 Declaration of Jeffrey N. Mausner, submitted separately herewith (“Mausner August
7 18, 2010 Decl.”). As explained below, a review of Google’s Responses demonstrates
8 that Defendant Google Inc. (“Google”) continues to refuse to comply with discovery
9 in this action, including discovery propounded by Perfect 10 concerning Blogger.

10 One of the key issues before this Court in connection with Perfect 10’s Motion
11 for Review of, and Objections to, Judge Hillman’s June 16, 2010 Order concerning
12 Perfect 10’s Motion for Evidentiary and Other Sanctions against Google (the
13 “Sanctions Motion”) is Judge Hillman’s incorrect ruling that Blogger was not at issue
14 in this case at the time that the discovery at issue in the Sanctions Motion was
15 propounded by Perfect 10. Perfect 10 explained, both in its moving papers and reply
16 papers, why Judge Hillman was incorrect. *See* Docket Nos. 925, 949, 960. Perfect
17 10 also explained that Google had failed to produce: (1) “[a]ll notices of
18 **termination issued by Google as a result of alleged intellectual property**
19 **violations,**” as required by Judge Hillman’s May 22, 2006 Order. *See* May 22, 2006
20 Order (Docket No. 163) at 5:15-20 (emphasis added); (2) a “**DMCA log,**” defined by
21 this Court as “**a spreadsheet-type document summarizing DMCA notices**
22 **received, the identity of the notifying party and the accused infringer, and the**
23 **actions (if any) taken in response.**” May 13, 2008 Order (Docket No. 294) at 5:1-9
24 (emphasis added); and (3) all third-party DMCA notices, despite Google’s prior
25 representations that it had produced “**all notices received by Google regarding**
26 **intellectual property violations**” and “**all underlying notices of infringement.**”¹
27

28 ¹ *See* Google’s Response to Document Request No. 196, dated February 23, 2007,
found at Mausner Decl. (Docket No. 618), Exh. F, p. 35, Response No. 196

1 As Perfect 10 explained, the various Court Orders regarding discovery and Google's
2 own prior representations compelled Google to produce the documents at issue in the
3 Sanctions Motion. Nevertheless, in the exercise of caution following Judge
4 Hillman's June 16, 2010 Order, Perfect 10 served its Fourteenth Set of Requests for
5 the Production of Documents upon Google ("Perfect 10's Requests"). Perfect 10's
6 Requests contained 38 specific requests for the production of documents, which were
7 phrased in the most explicit way possible and specifically referred to such Google
8 programs as Blogger, AdSense, AdWords, Image Search and Web Search. For
9 example, Perfect 10's Requests included the following specific requests:

10 YOUR DMCA LOG RELATING TO BLOGGER.

11 All notices of termination issued by GOOGLE as a result of alleged
12 intellectual property violations RELATING TO BLOGGER.

13 All notices of termination issued by GOOGLE as a result of alleged
14 intellectual property violations RELATING TO any GOOGLE product,
15 program, or service in which GOOGLE stores images on GOOGLE servers.

16 All notices of termination notices that RELATE TO any DMCA notice
17 received by GOOGLE from an ENTITY other than Perfect 10.

18 To the extent not included in response to any previous request, all
19 DOCUMENTS RELATING TO any notice of termination issued by
20 GOOGLE as a result of alleged intellectual property violations.

21 All DMCA notices received by GOOGLE RELATING TO BLOGGER.

22 All DMCA notices received by GOOGLE RELATING TO GOOGLE
23 ADSENSE.

24 All DMCA notices received by GOOGLE RELATING TO GOOGLE
25 ADWORDS.

26 All DMCA notices received by GOOGLE RELATING TO GOOGLE WEB
27 SEARCH.

28 All DMCA notices received by GOOGLE RELATING TO GOOGLE
IMAGE SEARCH.

(emphasis added); Joint Stipulation Re Plaintiff Perfect 10, Inc.'s Motion to Compel Defendant Google Inc. to Produce Documents, filed October 9, 2007, found at Mausner Decl. (Docket No. 618), Exh. L, p. 86, lines 21-22 (emphasis added).

1 All DMCA notices received by GOOGLE RELATING TO any GOOGLE
2 product, program, or service in which GOOGLE stores images on GOOGLE
3 servers.

4 All DMCA notices received by GOOGLE from an ENTITY other than
5 Perfect 10.

6 To the extent not included in response to any previous request, all
7 DOCUMENTS RELATING TO any DMCA notice received by GOOGLE.
8 GOOGLE'S REPEAT INFRINGER TRACKING SHEET RELATING TO
9 BLOGGER.

10 GOOGLE'S REPEAT INFRINGER TRACKING SHEET RELATING TO
11 GOOGLE ADWORDS.

12 GOOGLE'S REPEAT INFRINGER TRACKING SHEET RELATING TO
13 GOOGLE WEB SEARCH.

14 GOOGLE'S REPEAT INFRINGER TRACKING SHEET RELATING TO
15 GOOGLE IMAGE SEARCH.

16 Perfect 10 propounded these 38 requests despite its position that the documents
17 sought in these requests had already been requested and were already the subject of
18 Court Orders regarding discovery.

19 Perfect 10 received Google's Responses to Perfect 10's Requests on August
20 16, 2010. *See* Mausner August 18, 2010 Decl., Exh. A. As may be seen by a review
21 of Google's Responses, Google has objected to every request, and has refused to
22 produce responsive documents. *Id.*² Among its voluminous and inapplicable
23 objections, Google cites to the recent Court Orders as its basis for not producing
24 documents, including those relating to third-party DMCA notices. Google now also
25 states that Perfect 10's most recent requests for its DMCA log, DMCA notices,
26 termination notices, and other documents regarding Blogger are "duplicative" of
27 previous requests and "it has previously responded to Perfect 10's prior [requests...],
28 and will supplement its production regarding these requests as necessary and
appropriate." Google's position thus contradicts its prior claim that Perfect 10 never

² On August 16, counsel for Google also sent a letter to counsel for Perfect 10 asking Perfect 10 to agree to a stay of all discovery. Mausner August 18, 2010 Decl., Exh. B.

1 requested the documents at issue.

2 Google's Responses demonstrate that Google is continuing to engage in
3 significant obstruction of discovery in this action. Google continues to refuse to
4 produce documents requested by Perfect 10 that are clearly relevant to this action.
5 Google apparently realizes that these documents will show that Google did not
6 respond to third-party notices and did not have a valid DMCA policy or repeat
7 infringer policy. This Court should reject Google's position, sustain Perfect 10's
8 objections to Judge Hillman's June 16, 2010 Order, and compel Google to produce
9 these relevant documents forthwith.

10 Dated: August 18, 2010

Respectfully submitted,
Law Offices of Jeffrey N. Mausner

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12
13 By: Jeffrey N. Mausner
14 Jeffrey N. Mausner
15 Attorney for Plaintiff Perfect 10, Inc.
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