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7 Attorneys for Defendant Google Inc. and  
 8 AOL LLC

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

11  
 12 PERFORMANCE PRICING, INC.,  
 13 Plaintiff,  
 14  
 15 vs.  
 16 GOOGLE INC. and AOL LLC,  
 17 Defendants.

CASE NO.: CV09 -6283 GAF (CTx)

**DISCOVERY MATTER**

**DECLARATION OF EMILY C. O'BRIEN IN SUPPORT OF DEFENDANT GOOGLE INC. AND AOL LLC'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY THIRD PARTIES NEAL COHEN AND VISTA IP LAW GROUP LLC**

Crtrm.:  
 Judge:  
 Hrg. Date:  
 Hrg. Time:



1           7.     Attached hereto as Exhibit F is a true and accurate copy of  
2 selected pages from the deposition of Neal Cohen, taken February 11, 2009.

3  
4           8.     Attached hereto as Exhibit G is a true and accurate copy of the  
5 March 16, 2009 letter from Emily O'Brien to Christin Cho. Ms. Cho is an associate  
6 at Dovel & Luner LLP, the law firm representing Plaintiff Performance Pricing, Inc.  
7 in this matter. Dovel & Luner also represents third party Neal Cohen in connection  
8 with the subpoenas served in this matter. This letter memorializes a telephone  
9 conversation between myself and Ms. Cho, in which Ms. Cho affirmed that Mr.  
10 Cohen would revise entries in his privilege log for which he improperly asserted  
11 work product protection.  
12

13  
14           9.     Attached hereto as Exhibit H is a true and accurate copy of the  
15 revised Neal Cohen and Vista IP Law Group, LLP privilege log served on March  
16 31, 2009. This is referred to in the Joint Stipulation as the third privilege log.  
17

18           10.    Attached hereto as Exhibit I is a true and accurate copy of an  
19 electronic mail sent by Rachel Kim of Dovel & Luner to counsel for Defendants on  
20 April 16, 2009. Attached to this electronic mail, Ms. Kim produced documents  
21 previously withheld by Neal Cohen. These documents are not included as part of  
22 Exhibit I.  
23

24           11.    Attached hereto as Exhibit J is a true and accurate copy of the  
25 revised Neal Cohen and Vista IP Law Group, LLP privilege log served on April 21,  
26 2009. This is referred to in the Joint Stipulation as the fourth privilege log. Also  
27  
28

1 included in Exhibit J is the electronic mail sent by Rachel Kim to counsel for  
2 Defendants, to which the revised privilege log was attached. Attached to this  
3 electronic mail, Ms. Kim also produced documents previously withheld by Neal  
4 Cohen. These documents are not included as part of Exhibit J.  
5

6           12. Attached hereto as Exhibit K is a true and accurate copy of the  
7 revised privilege log of Neal Cohen and Vista IP Law Group, LLP served on May  
8 18, 2009. This is referred to in the Joint Stipulation as the fifth privilege log.  
9

10           13. Attached hereto as Exhibit L is a true and accurate copy of the  
11 May 22, 2009 letter from Emily O'Brien to Christin Cho regarding the Cohen  
12 privilege log.  
13

14           14. Attached hereto as Exhibit M is a true and accurate copy of the  
15 revised privilege log of Neal Cohen and Vista IP Law Group, LLP served on May  
16 29, 2009. This is referred to in the Joint Stipulation as the sixth privilege log.  
17 Please note that there was initially a problem with the service of the privilege log,  
18 such that Defendants did not receive it on May 29, 2009. The privilege log was re-  
19 served on June 2, 2009.  
20

21           15. Attached hereto as Exhibit N is a true and accurate copy of the  
22 June 8, 2009 letter from Emily O'Brien to Greg Dovel and Christin Cho. This letter  
23 summarizes the parties' meet and confer regarding the Neal Cohen and Vista IP Law  
24 Group, LLP privilege log. This letter identified each privilege log entry in dispute,  
25 outlined Defendants' position regarding this discovery issue, and cited case law in  
26  
27  
28

1 support of Defendants' position. During the meet and confer on June 4, 2009,  
2 Plaintiff's counsel indicated that they did not believe attorney-client privilege to  
3 have been waived, because the documents had not yet been produced.  
4

5 16. Attached hereto as Exhibit O is a true and accurate copy of the  
6 revised privilege log of Neal Cohen and Vista IP Law Group, LLP served on June  
7 12, 2009. This is referred to in the Joint Stipulation as the seventh privilege log.  
8

9 17. Attached hereto as Exhibit P is a true and accurate copy of the  
10 discovery order and docket control order entered in this case, and orders modifying  
11 the deadlines set in these initial orders.  
12

13 I declare under penalty of perjury under the laws of the United States of  
14 America that the foregoing is true and correct.

15 Executed on August 24, 2009 at San Francisco,  
16 California.

17  
18   
19 \_\_\_\_\_  
Emily C. O'Brien